TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted].1910.

No. [redacted] 444

THE UNITED STATES, PLAINTIFF IN ERROR,

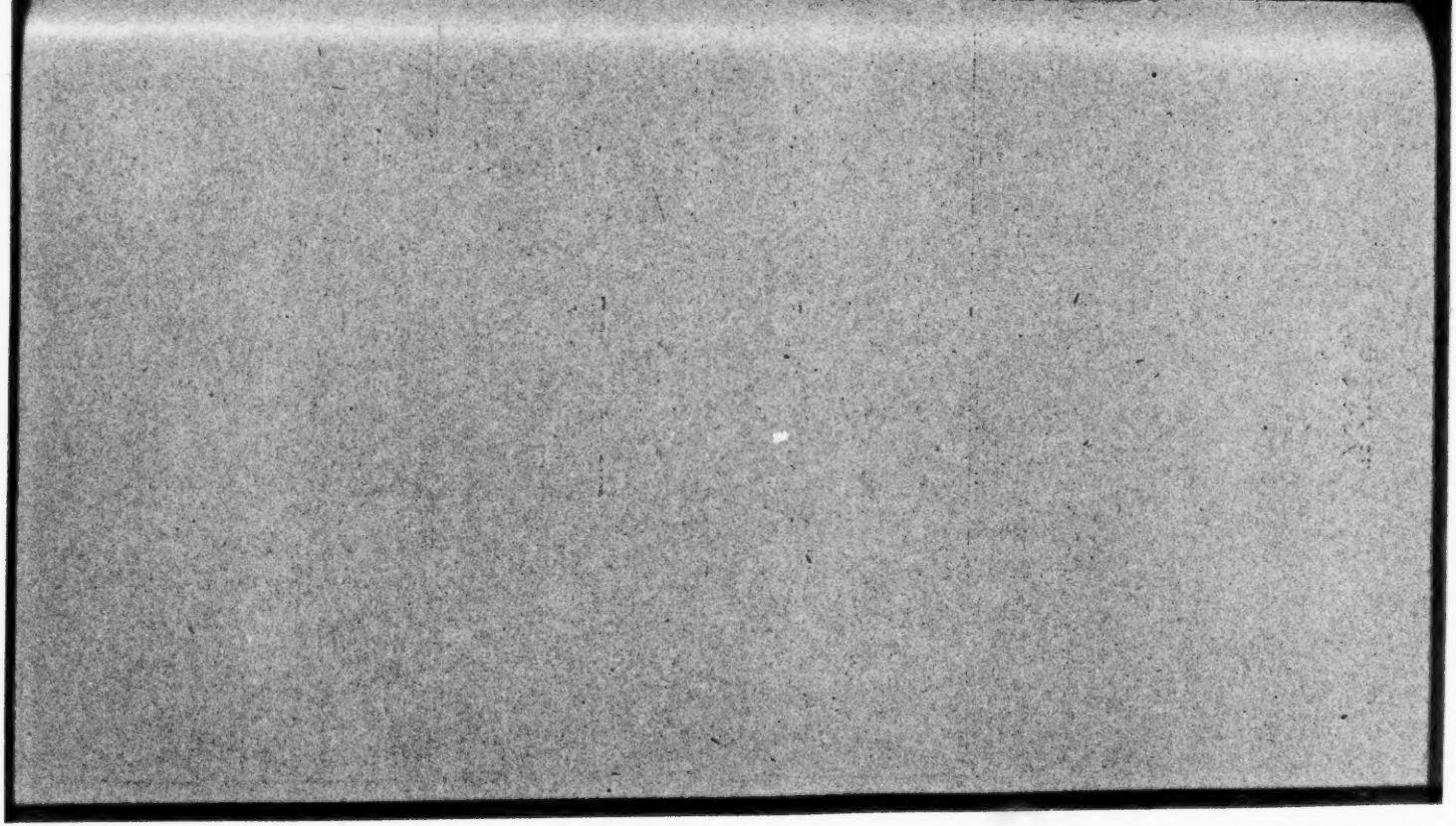
vs.

JAMES T. BARBER, SUMNER G. MOON, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

FILED FEBRUARY 16, 1910.

(22024)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 798.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JAMES T. BARBER, SUMNER G. MOON, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

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1 *Indictment.*

In the district court of the United States, within and for the central division of the district of Idaho.

UNITED STATES OF AMERICA *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, and Albert E. Palmer.	Indictment. Conspiracy to defraud the United States. Violation section 5440, R. S. U. S.

The grand jurors of the United States of America, duly empanelled and sworn in the District Court of the United States for the district of Idaho, and inquiring for said district, in the name and by the authority of the United States of America, upon their oaths do find and present, that James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, and divers other persons whose names are to the grand jurors unknown, in the State and district of Idaho, and within the jurisdiction of this court, heretofore, to-wit, on the first day of September, in the year nineteen hundred and one, and at the time of the committing of the several overt acts hereinafter in this indictment set forth, and continuously at all times between said first day of September, in the year nineteen hundred and one, and the day of the presenting and filing of this indictment did unlawfully conspire, combine, confederate, and agree together and with Frank Steunenberg, William Sweet, John Kincaid, Louis M. Pritchard, John I. Wells, Patrick Downs, and divers other persons whose names are to the grand jurors unknown, knowingly, wickedly, falsely, and corruptly to defraud the United States

2 of America out of the possession and use of and title to divers large tracts of timber lands of the United States situate in township six north, ranges four, five, six, seven, and eight east, of the Boise meridian, township seven north, ranges four, five, six, seven, and eight east, of the Boise meridian, and township eight north, range five east, of the Boise meridian, in the county of Boise, in the State of Idaho, and within the Boise, Idaho, land district of the United States, all of which lands were then and there public lands of the United States, by unlawfully, willfully, and corruptly soliciting, inducing, and procuring a large number of persons to apply for and enter said lands under the laws of the United States relating to the purchase and sale of the public timber lands of the United States at the United States land office at the city of Boise, in the State of Idaho, for the use and benefit of said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kincaid, Louis M. Pritchard, John I. Wells, and Patrick Downs, and such other persons and corporations as said last-named persons might thereafter designate upon an understanding and agreement between said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard,

John I. Wells, and Patrick Downs, and said persons so to be solicited, induced, and procured to enter said lands as aforesaid to be had, made, and entered into prior to and at the time of the first application of said persons so to be solicited, induced, and procured as aforesaid to enter said lands that the title to the lands which they, and each of them, would then be applying to enter, and which they might thereafter acquire, should inure to the use and benefit of said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs, and such other persons or corporations as they might thereafter designate, and upon the further understanding and agreement to be had, made, and entered into between said James T. Barber, Sumner G. Moon, Frank Martin,
Albert E. Palmer, Frank Steunenberg, William Sweet, John
3 Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs,
and said persons so to be solicited, induced, and procured as aforesaid prior to and at the time of the making of their several first applications to enter said lands that the said James T. Barber, Summer G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs would show and point out to and select for said persons so to be solicited, induced, and procured as aforesaid, the lands which they, and each of them, would subsequently apply to enter, and that said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs would furnish said persons so to be solicited, induced, and procured as aforesaid a description of the lands to be applied for by them, and prepare for them the necessary papers to be filed with the United States land office at the city of Boise, in the State of Idaho, in making their first applications to purchase said lands and to represent and defend them in all proceedings before said land office in relation to the entering and purchase of said lands, and with the further understanding and agreement to be had, made, and entered into between said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs, and said persons so to be solicited, induced, and procured as aforesaid, prior to and at the time of their said first applications to enter said lands, that said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs would, if necessary, furnish said persons, so to be solicited, induced, and procured as aforesaid with the money necessary to make final proof and to purchase said lands from the United States, and prepare all necessary deeds and conveyances to convey the interest and title which said persons so to
be solicited, induced, and procured as aforesaid might there-
4 after acquire to said James T. Barber, Sumner G. Moon, Frank
Martin, Albert E. Palmer, Frank Steunenberg, William Sweet,

John Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs, or such other persons or corporations as said last-named persons might thereafter designate, and to pay all the expenses attending the execution of such conveyances and the filing and recording of such conveyances.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement and to effect the object thereof, John I. Wells and Patrick Downs, afterwards, to wit, on the twenty-fourth day of September, in the year nineteen hundred and one, in the State and district of Idaho, unlawfully did solicit, induce, and procure Harvey H. Wells, Albert P. Nugent, and Arthur Anderson each to execute and verify by their oaths respectively, before the receiver of the United States land office at Boise, Idaho, a certain paper entitled, "Timber and stone lands sworn statement," and to present and file said papers in said office on said day, said paper so executed, verified, presented, and filed as aforesaid by said Harvey H. Wells, endorsed, in said office, "T. & S. #224," relating to the entry by him, for the unlawful purpose aforesaid, under the laws of the United States relating to the purchase and sale of timber lands of the United States, of the southwest quarter of section fourteen in township seven north, of range five east of the Boise meridian in Boise County, State of Idaho, and said paper so executed, verified, presented and filed as aforesaid by said Albert P. Nugent, endorsed in said office "T. & S. #225," relating to the entry by him, for the unlawful purpose aforesaid, under the laws of the United States relating to the purchase and sale of timber lands of the United States, of the east half of the northeast quarter of section fifteen and the southeast quarter of the southeast quarter of section ten and the southwest quarter of the southwest quarter of section eleven in township seven north, of range five east of the Boise Meridian, in Boise County, State of Idaho, and said paper so executed, verified and presented by said Arthur Anderson, endorsed in said office, "T. & S. #226," relating to the entry by him for the unlawful purpose aforesaid, under the laws of the United States relating to the purchase and sale of timber lands of the United States, of the east half of the northwest quarter and the west half of the northeast quarter of section fifteen in township seven north, of range five east of the Boise meridian, in Boise County, State of Idaho.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said John I. Wells and Patrick Downs, afterwards, to wit, on the twenty-fifth day of September, in the year nineteen hundred and one, in the State and district of Idaho, unlawfully did solicit, induce, and procure Abel E. Hunter to execute and verify by his oath before the receiver of the United States land office at Boise, Idaho, and James T. Ball to execute and verify by his oath before

the register of the United States land office at Boise, Idaho, each a certain paper entitled, "Timber and stone land sworn statement," and to present and file said papers in said office on said day, said paper so executed, verified, presented, and filed as aforesaid by said Abel E. Hunter, endorsed in said office "227," relating to the entry by him, for the unlawful purpose aforesaid, under the laws of the United States relating to the purchase and sale of timber lands of the United States, of the southeast quarter of section fourteen in township seven north, of range five east of the Boise meridian in Boise County, State of Idaho, and said paper so executed, verified, presented, and filed by said James T. Ball, endorsed in said
6 office "228," relating to the entry by him, for the unlawful purpose aforesaid, under the laws of the United States relating to the purchase and sale of timber lands of the United States, of the southwest quarter of section thirteen in township seven north, of range five east of the Boise meridian, in Boise County, State of Idaho.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said Frank Steunenberg, William Sweet, John Kinkaid, and John I. Wells afterwards, to wit, on the tenth day of December, in the year nineteen hundred and one, in the State and district of Idaho, did furnish Arthur Anderson, Albert P. Nugent, James T. Ball, Harvey H. Wells, and Abel E. Hunter with money to purchase the lands theretofore applied for by them at the local land office at Boise, Idaho, to be entered under the timber laws of the United States, that is to say, by Arthur Anderson on the twenty-fourth day of September in the year nineteen hundred and one, the east half of the northwest quarter and the west half of the northeast quarter of section fifteen in township seven north, of range five east of the Boise meridian, by Albert P. Nugent on the twenty-fourth day of September, in the year nineteen hundred and one, the east half of the northeast quarter of section fifteen and the southeast quarter of the southeast quarter of section ten and the southwest quarter of the southwest quarter of section eleven, in township seven north, of range five east of the Boise meridian, by Harvey H. Wells on the twenty-fourth day of September, in the year nineteen hundred and one, the southwest quarter of section fourteen in township seven north, of range five east of the Boise meridian, by James T. Ball, on the twenty-fifth day of September in the year nineteen hundred and one, the southwest quarter of section thirteen in township seven north, of range five east of the Boise meridian, and by Abel Hunter on the twenty-fifth day of September, in the year nineteen hundred and one, the southeast quarter of section fourteen in township seven north, of range five east of the
7 Boise meridian, all in the county of Boise, State of Idaho, and did solicit, induce, and procure them to make final proof and cash entry of such lands.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof the said James T. Barber and Sumner G. Moon together with one C. W. Lockwood did, on to wit, the ninth day of July in the year nineteen hundred and two, at the city of Eau Claire, in the county of Eau Claire, in the State of Wisconsin, associate themselves together for the purpose of forming and did then form a corporation under the laws of the State of Wisconsin, under the name of the Barber Lumber Company, to engage in, among other things, the business of manufacturing, and to buy, sell, release, exchange, hold and generally deal in all kinds of property, real, personal, and mixed, and to purchase, release, erect, build, construct, alter, maintain, own, and operate sawmills, planing mills, and lumber yards, manufacture and sell timber and all the products of timber, and to engage in lumbering, logging, and other like business; and that on to wit, the thirteenth day of May in the year nineteen hundred and three, the said James T. Barber and Sumner G. Moon filed in the office of the department of state of the State of Idaho, at the city of Boise, in said State, for the purpose of doing said business in said State, a copy of the articles of incorporation of said Barber Lumber Company of Eau Claire, Wisconsin, and otherwise complied with the laws of the State of Idaho for the purpose of obtaining for said corporation the privilege of conducting said business in the State of Idaho.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, and Albert E. Palmer did on, to wit, on the
8 thirteenth of January, in the year nineteen hundred and three, in the State and district of Idaho, solicit, induce, and procure Arthur Anderson, James T. Ball, Harvey H. Wells, and Abel E. Hunter, whose applications to enter the following lands situate in the county of Boise and State of Idaho, under the laws of the United States, at the local land office of the United States at Boise, Idaho, namely: By Arthur Anderson, on the twenty-fourth day of September, in the year nineteen hundred and one, the east half of the northwest quarter and the west half of the northeast quarter of section fifteen in township seven north of range five east of the Boise meridian; by Harvey H. Wells, on the twenty-fourth day of September, in the year nineteen hundred and one, the southwest quarter of section fourteen in township seven north of range five east of the Boise meridian; by James T. Ball, on the twenty-fifth day of September, in the year nineteen hundred and one, the southwest quarter of section thirteen in township seven north of range five east of the Boise meridian; by Abel E. Hunter, on the twenty-fifth day of September, in the year nineteen hundred and one, the southeast quarter of section fourteen in township seven north of range five east of the Boise

meridian, had been suspended for fraud by the Commissioner of the General Land Office, to apply for a hearing of their cases before the local land office at Boise, Idaho, for the purpose of having said order of suspension removed.

And the grand jurors aforesaid, upon their oath aforesaid, further present that, in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said Frank Martin did on, to wit, the ninth day of December, in the year nineteen hundred and three, appear before the register and receiver of the local land office of the United States at Boise, Idaho, and represent Arthur Anderson, Harvey H. Wells, James T. Ball, and Abel E. Hunter in the hearing had upon that date before the said register and receiver of said office upon the
9 question of the suspension of the entries made by them, respectively, at said office of the lands in the county of Boise and State of Idaho, hereinafter described, under the laws of the United States relating to the entry, purchase, and sale of timber lands, namely: By Arthur Anderson, on the twenty-fourth day of September, nineteen hundred and one, of the east half of the northwest quarter and the west half of the northeast quarter of section fifteen in township seven north of range five east of the Boise meridian; by Harvey H. Wells, on the twenty-fourth day of September, in the year nineteen hundred and one, of the southwest quarter of section fourteen in township seven north of range five east of the Boise meridian; by James T. Ball, on the twenty-fifth day of September, in the year nineteen hundred and one, of the southwest quarter of section thirteen in township seven north of range five east of the Boise meridian; by Abel E. Hunter, on the twenty-fifth day of September, in the year nineteen hundred and one, the southeast quarter of section fourteen in township seven north of range five east of the Boise meridian.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said Frank Martin did on, to wit, the seventh day of May, in the year nineteen hundred and four, in the State and district of Idaho, enter an appeal to the Commissioner of the General Land Office on behalf of Arthur Anderson, Harvey H. Wells, James T. Ball, and Abel E. Hunter from the decision of the register and receiver of the local land office of the United States at Boise, Idaho, rendered the ninth day of April, in the year nineteen hundred and four, holding that the several entries theretofore made by them at said office of timber lands in the county of Boise and State of Idaho under the laws of the United States relating to the entry, sale, and purchase of timber lands, namely: By Arthur Anderson, on the twenty-fourth day of September, in the year nineteen hundred and one, of the east half of the northwest quarter and the west half of the northeast quarter of section fifteen in township seven north
10 of range five east of the Boise meridian; by Harvey H. Wells, on the twenty-fourth day of September, in the year nineteen

hundred and one, of the southwest quarter of section fourteen in township seven north of range five east of the Boise meridian; by James T. Ball, on the twenty-fifth day of September, in the year nineteen hundred and one, of the southwest quarter of section thirteen in township seven north of range five east of the Boise meridian; by Abel E. Hunter, on the twenty-fifth day of September, in the year nineteen hundred and one, of the southeast quarter of section fourteen in township seven north of range five east of the Boise meridian, were fraudulent in character and should be cancelled.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that, in furtherance, continuance, and renewal of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said Frank Martin, with the conscious knowledge and participation of said James T. Barber, Sumner G. Moon, and Albert E. Palmer, did on, to wit, the thirty-first day of January, in the year nineteen hundred and five, and continuously from day to day, down to the third day of June, in the year nineteen hundred and five, in the State and district of Idaho, prosecute, maintain, and continue an appeal to the Secretary of the Interior of the United States on behalf of said Arthur Anderson, Harvey H. Wells, James T. Ball, and Abel E. Hunter, to obtain the review, reconsideration, and reversal by said Secretary of the decision of the Commissioner of the General Land Office of the United States theretofore rendered, holding the applications of Arthur Anderson, James T. Ball, Harvey H. Wells, and Abel E. Hunter, theretofore made and hereinafter more particularly described, to purchase certain of the above-described lands of the United States in Boise County, State of Idaho, under the laws of the United States relating to the entry, purchase, and sale of timber lands of the United States at the land office at Boise, Idaho, to be false, fraudulent, and fictitious, and directing the cancellation of the same, namely: The application by Arthur Anderson, on the
11 twenty-fourth day of September, in the year nineteen hundred and one, for the east half of the northwest quarter and the west half of the northeast quarter of section fifteen in township seven north of range five east of the Boise meridian; by Harvey H. Wells, on the twenty-fourth day of September, in the year nineteen hundred and one, for the southwest quarter of section fourteen in township seven north of range five east of the Boise meridian; by James T. Ball, on the twenty-fifth day of September, in the year nineteen hundred and one, for the southwest quarter of section thirteen in township seven north of range five east of the Boise meridian; by Abel E. Hunter, on the twenty-fifth day of September, in the year nineteen hundred and one, for the southeast quarter of section fourteen in township seven north of range five east of the Boise meridian, to be false and fraudulent, and directing the cancellation of such entries.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in furtherance, continuance, and renewal of said

unlawful conspiracy, confederation, and agreement and to effect the object thereof, said James T. Barber, Sumner G. Moon, Albert E. Palmer, and Frank Martin did on, to wit, the twenty-eighth day of June, in the year nineteen hundred and five, in the State and district of Idaho, solicit, induce, and procure Arthur Anderson, Harvey H. Wells, James T. Ball, and Abel E. Hunter to execute and file in the United States land office at Boise, Idaho, on said date a waive or relinquishment of their lands theretofore applied to be entered by them at said land office in pursuance of said unlawful conspiracy, confederation, and agreement, under the laws of the United States relating to the purchase and sale of timber lands, that is to say, by Arthur Anderson, on the twenty-fourth day of September in the year nineteen hundred and one, the east half of the northwest quarter and the west half of the northeast quarter of section fifteen, in township seven north, of range five east of the Boise meridian; by Harvey H. Wells, on the twenty-fourth day of September in the year
12 nineteen hundred and one, the southwest quarter of section fourteen, in township seven north, of range five east of the Boise meridian; by James T. Ball, on the twenty-fifth day of September in the year nineteen hundred and one, the southwest quarter of section thirteen, in township seven north, of range five east of the Boise meridian; by Abel E. Hunter, on the twenty-fifth day of September in the year of nineteen hundred and one, the southeast quarter of section fourteen, in township seven north, of range five east of the Boise meridian.

And the grand jury aforesaid, upon their oaths afore-said, do further present that, in furtherance, continuance of said unlawful conspiracy, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Albert E. Palmer, and Frank Martin did on, to wit, the nineteenth day of September, in the year nineteen hundred and five, in the State and district of Idaho, unlawfully induce Mary J. Martin, Nettie We-ston, Eleanor A. Phelps, and Leon S. Simpson to make application to the United States land office at Boise, Idaho, and execute and file therein on said date the preliminary written statement or affidavit required by law for the purchase of certain of the aforesaid lands in Boise County, Idaho, to wit, the lands theretofore applied to be purchased in pursuance of said unlawful combination, conspiracy, and agreement by Arthur Anderson, Harvey H. Wells, James T. Ball, and Abel E. Hunter, whose entries had been cancelled by the Department of the Interior of the United States for fraud, that is to say, by Leon S. Simpson, timber and stone lands sworn statement number 1582, for the east half of the northwest quarter and the west half of the northwest quarter of section fifteen, in township seven north, of range five east of the Boise meridian; by Eleanor A. Phelps, timber and stone lands sworn statement number 1853, for the southwest quarter of section thirteen, in township seven north, of range five east of the Boise meridian; by Mary J. Martin, timber and stone sworn statement No. 1584, for the south-

west quarter of section fourteen, in township seven north, of
13 range five east of the Boise meridian; by Nettie Weston, timber and stone sworn statement number 1585, for the purchase of the southeast quarter of section fourteen, in township seven north, of range five east of the Boise meridian.

Contrary to the form, force, and effect of the statute of the United States of America in such case made and provided and against the peace and dignity of the said United States.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said James T. Barber, Sumner G. Moon, Albert E. Palmer, and Frank Martin on, to wit, the twentieth day of April, in the year nineteen hundred and five, in the State and district of Idaho, and within the jurisdiction of this court, unlawfully did conspire, combine, confederate, and agree together, and with divers other persons to the grand jurors unknown, knowingly, wickedly, and corruptly to defraud the United States out of the possession and use of and the title to divers large tracts of public timber lands of the United States, of great value, situate in the county of Boise, in the State of Idaho, and within the Boise, Idaho, land district of the United States, which lands are more particularly described as follows, namely: The east half of the northwest quarter and the west half of the northeast quarter of section fifteen, in township seven north, of range five east of the Boise meridian; the southwest quarter of section fourteen, in township seven north, of range five east of the Boise meridian; the southwest quarter of section thirteen, in township seven north, of range five east of the Boise meridian; and the southeast quarter of section fourteen, in township seven north, of range five east of the Boise meridian, in the county of Boise, in the State of Idaho, and with the intent and purpose on the part of said James T. Barber, Sumner G. Moon, Albert E. Palmer, and Frank Martin unlawfully to acquire the possession and use of
14 and title to said lands for the use, benefit, and profit of themselves and the Barber Lumber Company, a corporation organized under the laws of the State of Wisconsin and doing business in the State of Idaho, under and pursuant to the laws of said State, with an office and agent at the city of Boise in said State.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that thereafter, in furtherance and continuance of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Albert E. Palmer, and Frank Martin, on, to wit, the twentieth day of April, in the year nineteen hundred and five, did prosecute, maintain, and continue an appeal to the Secretary of the Interior on behalf of Arthur Anderson, Harvey H. Wells, James T. Ball, and Abel E. Hunter, from a decision of the Commissioner of the General Land Office of the United States theretofore rendered,

holding the several applications of said Arthur Anderson, Harvey H. Wells, James T. Ball, and Abel E. Hunter to purchase the lands hereinbefore in this court described under the laws of the United States relating to the purchase and sale of the public timber lands of the United States, which applications were made, presented, and filed at the land office of the United States at the city of Boise, in the State of Idaho, on, to wit, the twenty-fourth and twenty-fifth days, respectively, of September, in the year nineteen hundred and one, were false and fraudulent, and directing the cancellation thereof, for the purpose of obtaining a review, reconsideration, and reversal of said decision.

Contrary to the form, force, and effect of the statute of the United States of America in such case made and provided and against the peace and dignity of the said United States.

15 THIRD COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said James T. Barber, Sumner G. Moon, Albert E. Palmer, Frank Martin on, to wit, the nineteenth day of September, in the year nineteen hundred and five, in the district and State of Idaho, and within the jurisdiction of this court, unlawfully did conspire, combine, confederate, and agree together and with divers other persons, to the grand jurors unknown, knowingly, wickedly, and corruptly to defraud the United States out of the possession and use of and title to divers large tracts of public timber lands of the United States, of great value, situate in the county of Boise, in the State of Idaho, and within the Boise, Idaho, land district of the United States, and within the jurisdiction of this court, all of which lands were then and there public lands of the United States open to entry and purchase under the laws of the United States pertaining to public timber lands of the United States, at the land office of the United States at Boise, Idaho, in the State of Idaho, in the manner and by means of the false, fraudulent, and unlawful understandings, agreements, and practices described and set forth in the first count of this indictment, the lands referred to being more specifically described as follows: The east half of the northwest quarter and the west half of the northeast quarter of section fifteen, in township seven north, of range five east of the Boise meridian; the southwest quarter of section thirteen, in township seven north, of range five east of the Boise meridian; the southwest quarter of section fourteen, in township seven north, of range five east of the Boise meridian; and the southeast quarter of section fourteen, in township seven north, of range five east of the Boise meridian.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in furtherance and continuance of said unlawful conspiracy, combination, confederation, and agreement, and
16 to effect the object thereof, the said Frank Martin, afterwards, to wit, on the nineteenth day of September, in the year nine-

teen hundred and five, at the city of Boise, in the State of Idaho, unlawfully did persuade, induce, solicit, procure, and cause Leon S. Simpson on said date to make and file in the United States land office at Boise, in the State of Idaho, a "timber and stone lands sworn statement," numbered 1582, in said land office, and make application to enter and purchase said timber lands of the United States, situate in the county of Boise, in the State of Idaho, described more particularly as follows: The east half of the northwest quarter and the west half of the northeast quarter of section fifteen, in township seven north, of range five east of the Boise meridian.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in furtherance and continuance of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said Frank Martin afterwards, to wit, on the nineteenth day of September, in the year nineteen hundred and five, at the city of Boise, in the State of Idaho, unlawfully did persuade, induce, solicit, procure, and cause Eleanor A. Phelps on said date to make and file in the United States land office at Boise, in the State of Idaho, a "timber and stone lands sworn statement," numbered 1583, in said land office, and make application to enter and purchase said timber lands of the United States, situate in the county of Boise, in the State of Idaho, described more particularly as follows: The southwest quarter of section thirteen, in township seven north, of range five east of the Boise meridian.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in furtherance and continuance of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said Frank Martin afterwards, to wit, on the nineteenth day of September, in the year nineteen hundred and
17 five, at the city of Boise, in the State of Idaho, *in* unlawfully did persuade, induce, solicit, procure, and cause Mary J. Martin on said date to make and file in the United States land office at Boise, in the State of Idaho, a "timber and stone lands sworn statement," numbered 1584, in said land office, and make application to enter and purchase said timber lands of the United States, situate in the county of Boise, in the State of Idaho, described more particularly as follows: The southwest quarter of section fourteen, in township seven north, of range five east of the Boise meridian.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in furtherance and continuance of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said Frank Martin afterwards, to wit, on the nineteenth day of September, in the year nineteen hundred and five, at the city of Boise, in the State of Idaho, unlawfully did persuade, induce, solicit, procure, and cause Nettie Weston on said date to make and file in the United States land office in the State of Idaho, a "timber and stone lands sworn statement," numbered 1585, in said land office, and make application to enter and purchase said timber lands of the United States, situate in the county of Boise, in the State of

Idaho, described more particularly as follows: The southeast quarter of section fourteen, in township seven north, of range five east of the Boise meridian.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in furtherance and pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, the said Frank Martin afterwards, to wit, on the twelfth day of January, in the year nineteen hundred and six, at the city of Boise, in the State of Idaho, did cause and induce the said Nettie Weston to make a deed conveying to him, the said Frank Martin, in fee simple, all the right, title, and
18 interest of her, the said Nettie Weston, in and to the said timber land in the county of Boise, in the State of Idaho, for which the said Nettie Weston had made and filed the said timber and stone lands sworn statement No. 1585, and entry and application to purchase at the United States land office at Boise, in the State of Idaho, and more particularly hereinbefore described in this count of the indictment.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that further in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, the said Frank Martin afterwards, to wit, on the thirteenth day of January, in the year nineteen hundred and six, at the city of Boise, in the State of Idaho, did cause and induce the said Eleanor A. Phelps to make a deed conveying to him, the said Frank Martin, in fee simple, all the right, title, and interest of her, the said Eleanor A. Phelps, in and to the said timber land in the county of Boise, in the State of Idaho, for which the said Eleanor A. Phelps had made and filed the said timber and stone lands sworn statement, numbered 1583, and entry and application to purchase at the United States land office at the city of Boise, in the State of Idaho, and more particularly hereinbefore described in this count of the indictment.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that further in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, the said Frank Martin afterwards, to wit, on the sixteenth day of June, in the year nineteen hundred and six, did appear at the United States land office at the city of Boise, in the State of Idaho, and demand of and receive from the register of said United States land office the patent issued by the United States to the said Nettie Weston, numbered 3440, and the
19 patent issued by the United States to Eleanor A. Phelps, numbered 3442, for the timber lands in the county of Boise, in the State of Idaho, for which the said Nettie Weston and Eleanor A. Phelps had each made and filed a timber and stone lands sworn statement and entry and application to purchase at the United States land office at the city of Boise, in the State of Idaho, and hereinbefore in this count of the indictment more particularly described.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that further in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, the said Frank Martin afterwards, to wit, on the sixteenth day of June, in the year nineteen hundred and six, did appear at the United States land office at the city of Boise, in the State of Idaho, and demand and receive from the register of said United States land office the patent issued by the United States to the said Mary J. Martin, numbered 3443, for the timber lands in the county of Boise, in the State of Idaho, for which the said Mary J. Martin had made and filed a timber and stone lands sworn statement and entry and application to purchase at the United States land office at the city of Boise, in the State of Idaho, and hereinbefore in this count of the indictment more particularly described.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that further in pursuance of said unlawful conspiracy, combination, confederation, and agreement, aforesaid, and to effect the object of the same, the said Frank Martin afterwards, to wit, on the twenty-fourth day of August, in the year nineteen hundred and six, did at the city of Boise, in the State of Idaho, cause and induce the said Leon S. Simpson to make and sign a deed conveying to him, the said Frank Martin, in fee simple, all the right, title, and interest of him, the said Leon S. Simpson, in and to the said timber land in the county of Boise, in the State of Idaho, for
20 which the said Leon S. Simpson had made and filed a timber and stone lands sworn statement, numbered 1582, and entry and application to purchase at the United States land office at the city of Boise, in the State of Idaho, and hereinbefore more particularly in this count of the indictment described.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say, that further in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, the said Frank Martin afterwards, to wit, on the twenty-eighth day of September, in the year nineteen hundred and six, did, at the city of Boise, in the State of Idaho, cause and induce the said Mary J. Martin to make a deed conveying to him the said Frank Martin, in fee simple, all the right, title, and interest of her, the said Mary J. Martin, in and to the said timber land in the county of Boise, in the State of Idaho, for which the said Mary J. Martin had made and filed a timber and stone lands sworn statement, numbered 1584, and entry and application to purchase at the United States land office at the city of Boise, in the State of Idaho, and more particularly in this count of the indictment described.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say, that further in pursuance of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, the said Frank Martin afterwards,

to wit, on the seventh day of November, in the year nineteen hundred and six, at the city of Boise, in the State of Idaho, did then and there, by a deed made, executed, and delivered, convey in fee simple to the Barber Lumber Company, a corporation, organized under the laws of the State of Wisconsin, and doing business and with offices in the State of Idaho, the title and interest of him, the said Frank Martin, in and to the timber land situate in the county of
21 Boise, in the State of Idaho, which he had previously acquired title to by deeds from Nettie We-ton, Eleanor A. Phelps, Leon S. Simpson, and Mary J. Martin, and more particularly described as the southwest quarter of section fourteen, the southwest quarter of section thirteen, the southeast quarter of section fourteen, the east half of the northwest quarter and the west half of the northeast quarter of section fifteen, all in township seven north of range five east of the Boise meridian, containing six hundred and forty acres according to the government survey thereof:

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said James T. Barber, Sumner G. Moon, Albert E. Palmer, and Frank Martin, in the State and district of Idaho, and within the jurisdiction of this court, heretofore, to wit, on the first day of September, in the year nineteen hundred and one, and at the time of the committing of the several overt acts hereinafter in this indictment set forth, and continuously at all times between said first day of September, in the year nineteen hundred and one, and the day of the presenting and filing of this indictment, did unlawfully con-pire, combine, confederate, and agree together and with Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs, and divers other persons whose names are to the grand jurors unknown, knowingly, wickedly, falsely, and corruptly to defraud the United States of America out of the possession and use of and title to divers large tracts of timber lands of the United States situate in township six
22 north, ranges four, five, six, seven, and eight east of the Boise meridian, town-hip seven north, ranges four, five, six, seven, and eight east of the Boise meridian, and township eight north, range five east of the Boise meridian, in the county of Boise, in the State of Idaho, and within the Boise, Idaho, land district of the United States, all of which lands were then and there public lands of the United States, with the intent and purpose unlawfully to obtain the title to said lands for the use, benefit, and profit of themselves and a certain corporation thereafter to be organized, and organized, to wit, the Barber Lumber Company, a corporation organized under the laws of the State of Wisconsin and doing business in the State of Idaho, with an office and agent at the city of Boise in said State,

and ultimately to obtain the transfer of the title to said lands to said corporation, by unlawfully, wilfully, and corruptly soliciting, inducing, and procuring a large number of persons to apply for and enter said lands under the laws of the United States relating to the purchase and sale of the public timber lands of the United States, at the United States land office at the city of Boise, in the State of Idaho, for the use and benefit of said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs, and said corporation, upon an understanding and agreement between said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs, and said persons so to be solicited, induced, and procured to enter said lands as aforesaid, which agreement was to be had, made, and entered into prior to and at the time of the first application to enter said lands of said persons so to be solicited, induced, and procured as aforesaid, that the title to the lands that they, and each of them, would then be applying to enter, and which they might thereafter acquire, should inure to the use and benefit of said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John
23 I. Wells, Patrick Downs, and said corporation, and upon the further understanding and agreement to be had, made, and entered into between said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs, and said persons so to be solicited, induced, and procured as aforesaid prior to and at the time of the making of their several first applications to enter said lands that the said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs would show and point out to and select for said persons so to be solicited, induced, and procured as aforesaid the lands which they, and each of them, would subsequently apply to enter, and that the said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs would furnish said persons so to be solicited, induced, and procured as aforesaid a description of the lands to be applied for by them, and prepare for them the necessary papers to be filed with the United States land office at the city of Boise, in the State of Idaho, in making their first application to purchase said lands, and to represent and defend them in all proceedings before said land office in relation to the entering and purchase of said lands, and with the further understanding and agreement to be had, made, and entered into between said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis

M. Pritchard, John I. Wells, Patrick Downs, and said persons so to be solicited, induced, and procured as aforesaid, prior to and at the time of their said first applications to enter said lands, that the said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs would, if necessary, furnish said persons so to be solicited, induced, and procured as afore-
24 said with the money necessary to make final proof and to purchase said lands from the United States, and prepare all necessary deeds and conveyances to convey the interest and title which said persons so to be solicited, induced, and procured as aforesaid might thereafter acquire to said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, Patrick Downs, and said corporation and such other persons as they might thereafter designate for the use and benefit of said corporation, and to pay all the expenses attending the execution of such conveyances and the filing and recording of such conveyances.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that thereafter in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs did unlawfully solicit, induce, and procure the following persons, namely: John J. Keane, Roy Dye, Henry T. James, John I. Wells, Samuel Dye, Oral Dye, Kate Hunter, Dean West, Louisa B. West, William Pearson, Margaret Pearson, Lelia Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, Harry L. Clyne, Louis Nibler, Edward Brisbin, William W. Abrams, Lewis K. Burns, Lewis L. Folsom, Walter L. Harrison, James O. Baker, Charles W. Balentine, Norman H. Young, Lettie L. Stephenson, Martin S. Stephenson, Charles N. Arbuckle, Susan N. Arbuckle, Altha Gillum, Mack Gillum, Samuel Greig, Sarah Greig, Patrick H. Downs, Albert B. Ewing, William H. Martin, Henrietta B. Martin, Ery A. Wilmot, Edward E. Butler, Wilbert F. Wilmot, Louis M. Pritchard, Louise E. Butler, Elvie M. Butler, General L. Willhite, Senora A. Joplin, Andrew F. Joplin, Walter Joplin, William E. Cavanaugh, William H. Gibberd, Addie G. Gibberd, Willis A. Ross, Josie M. Ross, Clara M. Snow, George E. Eagleson, Mary J. Eagleson, Alexander T. Ellis, Joseph Ehrmanntrant, Margaret M. Ehrmann-
25 trant, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, Rice J. Harbaugh, Margaret Scully, Abbie M. Briggs, George G. Gibson, Uriah F. McBurney, Clifton C. Bliven, and Thomas F. Kelley, to make application to the United States land office at the city of Boise in the State of Idaho, to purchase certain portions of the land hereinbefore in this count described under the laws of the United States relating to the purchase and sale of the public timber lands of the United States, and to execute and

verify before the proper officers of said land office the preliminary affidavits or sworn statements required by law to be made, executed, and filed in said office by persons applying to purchase said lands under said laws, said lands and said preliminary affidavits or sworn statements being hereinafter in this count more particularly set forth and described.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter on the dates of the making of the final proof of the several persons hereinafter referred to, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, William Sweet, John Kinkaid, Louis M. Pritchard, John I. Wells, and Patrick Downs did unlawfully solicit, induce, and procure the following persons, namely: John J. Keane, Roy Dye, Henry T. James, John I. Wells, Samuel Dye, Oral Dye, Kate Hunter, Dean West, Louisa B. West, William Pearson, Margaret Pearson, Lelia Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, Harry L. Clyne, Louis Nibler, Edward Brisbin, William W. Abrams, Lewis K. Burns, Lewis L. Folsom, Walter L. Harrison, James O. Baker, Charles W. Balentine, Norman H. Young, Lettie L. Stephenson, Martin S. Stephenson, Charles N. Arbuckle, Susan N. Arbuckle, Altha Gillum, Mack Gillum, Samuel Greig, Sarah Greig, Patrick H. Downs, Albert B. Ewing, William H. Martin, Henrietta S.
26 Martin, Ery A. Wilmot, Edward E. Butler, Wilbert F. Wilmot, Louis M. Pritchard, Louise E. Butler, Elvie M. Butler, General L. Willhite, Senora A. Joplin, Andrew F. Joplin, Walter Joplin, William E. Cavanaugh, William H. Gibberd, Willis A. Ross, Josie M. Ross, Clara M. Snow, George E. Eagleson, Mary J. Eagleson, Alexander T. Ellis, Joseph Ehrmanntrant, Margaret M. Ehrmanntrant, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, Rice J. Harbaugh, Margaret Scully, Abbie M. Briggs, George G. Gibson, Uriah F. McBurney, Clifton C. Bliven, and Thomas F. Kelly to make final proof at the United States land office at the city of Boise in the State of Idaho, upon certain of the lands above described theretofore entered by them at said land office, and to pay the purchase price thereof to the United States, which lands and the dates of the said final proof and payment of said purchase price, otherwise termed cash entry, are hereinafter in this court more particularly set forth and described.

The following is the official number of the verified preliminary written statements or affidavits filed by the persons in this count hereinbefore named, the dates of the filing thereof in the United States land office at the city of Boise in the State of Idaho and of making the final proof therefor and a description of the lands described therein, respectively, all of said descriptions having reference to the Boise meridian and all of said lands being situate within the Boise, Idaho, land district, in the county of Boise in the State of Idaho, to wit:

John J. Keane, No. 249; date of filing, October 26, 1901; cash entry No. 1813; date of final proof, January 16, 1902. W. half NE. quarter, W. ½ of the SE. ¼ sec. 21, T. 7 N., R. 5 E., B. M.

Roy Dye, No. 370; date of filing, April 29, 1902; cash entry No. 1939; date of final proof, July 18, 1902. SE. ¼ sec. 15, T. 7 N., R. 5 E., B. M.

Henry T. James, No. 383; date of filing, May 5, 1902; cash entry No. 1966; date of final proof, July 24, 1902. SE. ¼ sec. 13, T. 7 N., R. 5 E., B. M.

John I. Wells, No. 219; date of filing, September 20, 1901; cash entry No. 3025; date of final proof, December 12, 1901. NW. ¼ sec. 14, T. 7 N., R. 5 E., B. M.

Samuel Dye, No. 247; date of filing, October 26, 1901; date of final proof, January 16, 1902. S. ½ SE. ¼ sec. 27, S. ½ SW. ¼ sec. 26, T. 7 N., R. 5 E., B. M.

Oral Dye, No. 250; October 26, 1901; date of final proof, January 16, 1902. Lot 1, SE. ¼ NE. ¼, NE. ¼ SE. ¼, sec. 5, NW. ¼ SW. ¼, sec. 4, T. 7 N., R. 5 E., B. M.

Kate Hunter, No. 237; October 5, 1901; cash entry No. 2021; final proof, December 19, 1901. S. W. ¼ sec. 15, T. 7 N., R. 5 E., B. M.

Louisa B. West, No. 262; November 1, 1901; cash entry No. 1940; final proof, January 29, 1902. NW. ¼ sec. 23, T. 7 N., R. 5 E., B. M.

William Pearson, No. 276; November 26, 1901; cash entry No. 1886; final proof, February 13, 1902. NE. ¼ sec. 12, T. 7 N., R. 5 E., B. M.

Margaret Pearson, No. 289; December 7, 1901; cash entry No. 1879; final proof, February 21, 1902. N. ½ NW. ¼, NW. ¼ NE. ¼, sec. 27, SE. ¼ SW. ¼, sec. 22, T. 7 N., R. 5 E., B. M.

Lelia Lee, No. 294; December 19, 1901; cash entry No. 1946; final proof, March 6, 1902. SE. ¼ sec. 1, T. 7 N., R. 5 E., B. M.

Arthur E. Brookhart, No. 320; January 14, 1902; cash entry No. 2050; final proof, April 8, 1902. SW. ¼ sec. 35, T. 7 N., R. 5 E., B. M.

Gustav A. Link, No. 263; November 1, 1901; cash entry No. 1957; final proof, January 29, 1902. SW. ¼ sec. 24, T. 7 N., R. 5 E., B. M.

Mary Link, No. 264; November 1, 1901; cash entry No. 2022; final proof, January 29, 1902. N. ½ SE. ¼ sec. 22, N. ½ SW. ¼ sec. 23, T. 7 N., R. 5 E., B. M.

Harry L. Clyne, No. 259; October 31, 1901; cash entry No. 2025; final proof, January 24, 1902. SE. ¼ sec. 6, T. 7 N., R. 5 E., B. M.

Louis Nibler, No. 261; November 1, 1901; cash entry No. 2012; final proof, January 28, 1902. SE. ¼ sec. 23, T. 7 N., R. 5 E., B. M.

Edward Brisbin, No. 360; April 18, 1902; cash entry No. 1904; final proof, July 9, 1902. Lot 3, SE. ¼ NE. ¼, N. ½ SW. ¼, sec. 1, T. 7 N., R. 5 E., B. M.

William W. Abrams, No. 258; October 30, 1901; cash entry No. 1922; final proof, January 22, 1902. Lots 3, 4, sec. 5, T. 7 N., R. 5 E., S. ½ SW. ¼ sec. 32, T. 8 N., R. 5 E., B. M.

Lewis K. Burns, No. 278; November 26, 1902; cash entry No. 1891; final proof, February 14, 1902. NW. ¼ sec. 24, T. 7 N., R. 5 E., B. M.

Lewis L. Folsom, No. 257; October 30, 1901; cash entry No. 1974; final proof, January 22, 1902. NE. ¼ NW. ¼ sec. 18, SE.¼ NW. ¼, E. ½ SW. ¼ sec. 7, T. 7 N., R. 5 E., B. M.

28 James O. Baker, No. 306; December 24, 1901; cash entry No. 1958; final proof, March 20, 1902. SE. ¼ sec. 25, T. 7 N., R. 5 E., B. M.

Charles W. Ballentine, No. 256; October 29, 1901; cash entry No. 2466; final proof, January 22, 1901. NE. ¼ sec. 7, T. 7 N., R. 5 E., B. M.

Norman H. Young, No. 321; January 22, 1902; cash entry No. 1931; final proof, April 14, 1902. S. ½ NW. ¼ sec. 17, SE. ¼ NE. ¼, NE. ¼ SE. ¼ sec. 18, T. 7 N., R. 5 E., B. M.

Lettie L. Stephenson, No. 304; December 24, 1901; cash entry No. 1944; final proof, March 13, 1902. SE. ¼ sec. 34, T. 7 N., R. 5 E., B. M.

Martin S. Stephenson, No. 305; December 24, 1901; cash entry No. 1945; final proof, March 14, 1902. E. ½ NE. ¼ sec. 33, W. ½ NW. ¼ sec. 34, T. 7 N., R. 5 E., B. M.

Charles N. Arbuckle, No. 376; May 3, 1902; cash entry No. 1967; final proof, July 24, 1902. SW. ¼ NE. ¼, W. ½ SE. ¼ sec. 27, NW. ¼ NE. ¼ sec. 34, T. 8 N., R. 5 E., B. M.

Susan N. Arbuckle, No. 378; May 3, 1902; cash entry No. 1968; final proof, July 24, 1902. S. ½ SE. ¼, NW. ¼ SE. ¼, SW. ¼ NE. ¼ sec. 19, T. 7 N., R. 5 E., B. M.

Altha Gillum, No. 313; December 26, 1901; cash entry No. 1941; final proof, March 27, 1902. S. ½ NW. ¼, S. ½ NW. ¼ sec. 25, T. 8 N., R. 5 E., B. M.

Mack Gillum, No. 312; December 26, 1901; cash entry No. 1983; final proof, March 18, 1902. NE. ¼ sec. 26, T. 8 N., R. 5 E., B. M.

Samuel Greig, No. 287; December 7, 1901; cash entry No. 1895; final proof, February 21, 1902. Lot 4, sec. 1, lots 1, 2, 3, sec. 2, T. 7 N., R. 5 E., B. M.

Sarah Greig, No. 288; December 7, 1901; cash entry No. 1896; final proof, February 21, 1902. S ½ NW. ¼, S. ½ NE. ¼ sec. 2, T. 7 N., R. 5 E., B. M.

Patrick H. Downs, No. 204; August 17, 1901; cash entry No. 1977; final proof, November 13, 1901. N. ½ NE. ¼, N. ½ NW. ¼ sec. 17, T. 7 N., R. 5 E., B. M.

Albert B. Ewing, No. 496; August 11, 1902; cash entry No. 2153; final proof, November 7, 1902. Lots 3, 4, E. ½ SW. ¼ sec. 7, T. 7 N., R. 5 E., B. M.

William H. Martin, No. 637; September 29, 1902; cash entry No. 2347; final proof, March 18, 1903. SE. ¼ sec. 7, T. 7 N., R. 8 E., B. M.

Henrietta B. Martin, No. 636; September 29, 1902; cash entry No. 2346; final proof, March 13, 1903. E. ½ NW. ¼ lots 1, 2, sec. 7, T. 7 N., R. 8 E., B. M.

29 Ery A. Wilmot, No. 332; March 22, 1902; cash entry No. 1836; final proof, June 12, 1902. NW. ¼ sec. 17, T. 6. N., R. 6 E., B. M.

Edward E. Butler, No. 348; March 28, 1902; cash entry No. 1888; final proof, June 24, 1902. SE. ¼ sec. 32, T. 6 N., R. 6 E., B. M.

Wilbert F. Wilmot, No. 308; December 26, 1901; cash entry No. 1943; final proof, July 18, 1902. Lots 3, 4, 5, SE. ¼ NW. ¼ sec. 6, T. 7 N., R. 6 E., B. M.

Elvie M. Butler, No. 582; September 15, 1902; cash entry No. 2255; final proof, January 8, 1903. Lot 4, SW. ¼ NW. ¼, W. ½ SW. ¼ sec. 2, T. 7 N., R. 8 E., B. M.

General L. Willhite, No. 625; Sept. 24, 1902; cash entry No. 2281; final proof, Jan. 27, 1903. SW. ¼ sec. 32, T. 7 N., R. 8 E., B. M.

Sonora A. Joplin, No. 645; Oct. 2, 1902; cash entry No. 2350; final proof, March 19, 1903. SW. ¼ sec. 33, T. 7 N., R. 8 E., B. M.

Andrew F. Joplin, No. 644; Oct. 2, 1902; cash entry No. 2351; final proof, March 19, 1903. Lots 1, 2, 3, 4 sec. 5, T. 6 N., R. 8 E., B. M.

Walter Joplin, No. 613; Sept. 23, 1902; cash entry No. 2405; final proof, May 4, 1903; W. ½ NE. ¼, SE. ¼ NE. ¼, NE. ¼ SE. ¼ sec. 20, T. 7 N., R. 8 E., B. M.

William E. Cavanaugh, No. 550; Sept. 14, 1902; cash entry No. 2245; final proof, Dec. 26, 1902; N. ½ NW. ¼, N. ½ NE. ¼ sec. 15, T. 7 N., R. 8 E., B. M.

William H. Gibberd, No. 527; Aug. 29, 1902; cash entry No. 2187; final proof, Dec. 3, 1902. E. ½ NW. ¼, SW. ¼ NW. ¼, NE. ¼ SW. ¼ sec. 12, T. 7 N., R. 7 E., B. M.

Addie G. Gibberd, No. 503; Sept. 8, 1902; cash entry No. 2238; final proof, Dec. 23, 1902. Lots 3, 4, S. ½ NW. ¼ sec. 2, T. 7. N., R. 7 E., B. M.

Willis A. Ross, No. 1055; Sept. 14, 1903; cash entry No. 2797; final proof, Dec. 23, 1903. SE. ¼ sec. 20, T. 6 N., R. 4 E., B. M.

Josie M. Ross, No. 1056; Sept. 14, 1903; cash entry No. 2798; final proof, Dec. 23, 1903. SW. ¼ sec. 20, T. 6 N., R. 4 E., B. M.

Clara M. Snow, No. 1059; Sept. 14, 1903; cash entry No. 2861; final proof, Dec. 24, 1903. NE. ¼ sec. 15, T. 6 N., R. 4 E., B. M.

George E. Eagleson, No. 1036; Sept. 14, 1903; cash entry No. 2765; final proof, Dec. 11, 1903. E. ½ NE. ¼, E. ½ SE. ¼ sec. 27, T. 6 N., R. 4 E., B. M.

Mary J. Eagleson, No. 1037; Sept. 14, 1903; cash entry No. 2766; final proof, Dec. 11, 1903. Lot 2, SW. ¼ NE. ¼, W. ½ SE. ¼ sec. 1, T. 6 N., R. 4 E., B. M.

30 Alexander T. Ellis, No. 1048; September 14, 1903; cash entry No. 2770; final proof, Dec. 11, 1903. N. ½ NW. ¼, W. ½ NE. ¼ sec. 22, T. 6 N., R. 4 E., B. M.

Joseph Ehrmanntrant, No. 1051; Sept. 14, 1903; cash entry No. 2775; final proof, Dec. 15, 1903. NW. ¼ sec. 15, T. 6 N., R. 4 E., B. M.

Margaret M. Ehrmanntrant, No. 1057; Sept. 14, 1903; cash entry No. 2776; final proof, Dec. 15, 1903. SE. ¼ sec. 15, T. 6 N., R. 4 E., B. M.

George R. Avery, No. 1052; Sept. 14, 1903; cash entry No. 2781; final proof, Dec. 12, 1903. SE. ¼ sec. 29, T. 6 N., R. 4 E., B. M.

Frank R. Martin, No. 1050; Sept. 14, 1903; cash entry No. 2777; final proof, Dec. 15, 1903. NE. ¼ sec. 21, T. 6 N., R. 4 E., B. M.

Wheeler H. Martin, No. 1038; Sept. 14, 1903; cash entry No. 2930; final proof, March 9, 1904. SE. ¼ sec. 21, T. 6 N., R. 4 E., B. M.

Thomas L. Martin, No. 1039; Sept. 14, 1903; cash entry No. 2769; final proof, Dec. 11, 1903. SW. ¼ sec. 23, T. 6 N., R. 4 E., B. M.

Rice J. Harbaugh, No. 1062; Sept. 14, 1903; cash entry No. 2754; final proof, Dec. 7, 1903. S. ½ SW. ¼, NW. ¼ SW. ¼, SW. ¼ NW. ¼ sec. 22, T. 6 N., R. 4 E., B. M.

Margaret Scully, No. 1035; Sept. 14, 1903; cash entry No. 2763; final proof, Dec. 10, 1903. NW. ¼ sec. 20, T. 6 N., R. 4 E., B. M.

Abbie M. Briggs, No. 1342; June 8, 1904; cash entry No. 3129; final proof, Sept. 20, 1904. SW. ¼ NE. ¼, NW. ¼ SE. ¼, SW. ¼ SE. ¼, NE. ¼ SE. ¼ sec. 5, T. 6 N., R. 4 E., B. M.

George G. Gibson, No. 335; March 25, 1902; cash entry No. 1870; final proof, June 17, 1902. NW. ¼ sec. 21, T. 6 N., R. 6 E., B. M.

Uriah F. McBurney, No. 303; Dec. 23, 1901; cash entry No. 1989; final proof, March 13, 1902. SE. ¼ sec. 11, T. 7 N., R. 5 E., B. M.

Clifton C. Bliven, No. 594; Sept. 16, 1902; cash entry No. 2401; final proof, April 29, 1903. E. ½ NE. ¼, N. ½ SE. ¼ sec. 24, T. 7 N., R. 7 E., B. M.

Thomas F. Kelly, No. 549; Sept. 4, 1902; cash entry No. 2217; final proof, December 17, 1902. SW. ¼ sec. 10, T. 7 N., R. 8 E., B. M.

Dean West, No. 248; October 26, 1901; cash entry No. 1903; final proof, January 16, 1902. S. ½ SW. ¼ sec. 27, S. ½ SE. ¼ sec. 28, T. 7 N., R. 5 E., B. M.

Walter L. Harrison, No. 274; November 26, 1901; cash entry No. 2063; final proof, February 12, 1902. Lot 3, NE. ¼ SW. ¼, NW. ¼ SE. ¼ sec. 30, T. 7 N., R. 5 E., B. M. SW. ¼ NE. ¼ sec. 30, T. 7 N., R. 5 E., B. M.

31 Louis M Pritchard, No. 330; March 21, 1902; cash entry No. 1841; final proof, June 13, 1902. NW. ¼ sec. 20, T. 6 N., R. 6 E., B. M.

Louise E. Butler, No. 581; September 15, 1902; cash entry No. 2254; final proof, January 8, 1903. N. ½ SW. ¼, N. ½ SE. ¼ sec. 4, T. 7 N., R. 8 E., B. M.

32 And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, Albert E. Palmer, Frank Steunenberg, John Kinkaid, Louis M. Pritchard, and John I. Wells did, at the city of Boise, in the State of Idaho, unlawfully solicit, induce, and procure the following persons, namely: John J. Keane,

Roy Dye, Henry T. James, John I. Wells, Samuel Dye, Oral Dye, Kate Hunter, Dean West, Louisa B. West, William Pearson, Margaret Pearson, Lelia Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, Harry L. Clyne, Louis Nibler, Edward Brisbin, William W. Abrams, Lewis K. Burns, Lewis L. Folsom, Walter L. Harrison, James O. Baker, Charles W. Balentine, Norman H. Young, Lettie L. Stehpenson, Martin S. Stephenson, Charles N. Arbuckle, Susan N. Arbuckle, Altha Gillum, Mack Gillum, Samuel Greig, Sarah Greig, Patrick H. Downs, Albert B. Ewing, William H. Martin, Henrietta S. Martin, Ery A. Wilmot, Edward E. Butler, Wilbert F. Wilmot, Louis M. Pritchard, Louise E. Butler, Elvie M. Butler, General L. Willhite, Sonora A. Joplin, Andrew F. Joplin, Walter Joplin, William E. Cavanaugh, William H. Gibberd, Willis A. Ross, Josie M. Ross, Clara M. Snow, George E. Eagleson, Mary J. Eagleson, Alexander T. Ellis, Joseph Ehrmanntrant, Margaret M. Ehrmanntrant, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, Rice J. Harbaugh, Margaret Scully, Abbie M. Briggs, George G. Gibson, Uriah F. McBurney, Clifton C. Bliven, and Thomas F. Kelly, to convey either to A. E. Palmer, otherwise known as Albert E. Palmer, or George S. Long or Horace S. Rand all their interest in and title to the lands in the county of Boise, in the State of Idaho, theretofore entered and purchased by them at the United States land office at Boise, in the State of Idaho, under the laws of the
33 United States, which lands and dates of entry and purchase are hereinbefore in this count more particularly set forth and described.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter, to wit, on the tenth day of April, in the year nineteen hundred and five, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, and Albert E. Palmer did, at the city of Boise, in the State of Idaho, solicit, induce, and procure George S. Long to make, execute, and deliver a deed of conveyance, releasing, quitclaiming, and conveying to the said Barber Lumber Company all his right, title, and interest in and to the following-described timber lands, situate in the county of Boise, in the State of Idaho, to wit: Township 5 north, range 4 east, Boise meridian, section 4, lots 5, 6, 7, SW. ¼ of NW. ¼, NE. ¼ of SW. ¼, W. ½ of SE. ¼; section 9, NW. ¼ of NE. ¼; township 6 north, range 4 east, Boise meridian, section 1, lot 2, SW. ¼ of NE. ¼, W. ½ of SE. ¼; section 12, SW. ¼ of NE. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼; section 15, NE. ¼ of NW. ¼, SW. ¼ of SW. ¼; section 17, SE. ¼ of SW. ¼, NE. ¼ of SE. ¼, S. ½ of SE. ¼; section 20, NE. ¼, NW. ¼, SW. ¼, SE. ¼; section 21, NE. ¼, NW. ¼, SW. ¼, SE. ¼; section 22, W. ½ of NE. ¼, N. ½ of NW. ¼, SW. ¼ of NW. ¼, W. ½ of SW. ¼, SE. ¼ of SW. ¼; section 23, SW. ¼; section 27, E. ½ of NE. ¼, S. ½ of SE. ¼; section 28, W. ½ of NE. ¼, NW. ¼, SW. ¼, W. ½ of SE. ¼; section 29, NE. ¼, NW. ¼, SW. ¼, SE. ¼.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that, thereafter, to wit, on the twenty-seventh day of May, in the year nineteen hundred and five, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said Albert E. Palmer, with the knowledge and consent and upon the request of the said James T. Barber, Sumner G. Moon, and Frank Martin, did make and execute a deed of conveyance granting and conveying to the said Barber Lumber Company all his right
34 title, and interest in and to the following-described timber lands situate in the county of Boise, in the State of Idaho, to wit:

Township 6 north, range 5 east, Boise meridian, SE. ¼ section 7.

Township 6 north, range 6 east, Boise meridian, E. ½ SE. ¼ section 7; S. ½ SW. ¼ sec. 8; NW. ¼ S. ½, SW. ¼ S. ½, SE. ¼ sec. 17; E. ½ NE. ¼ sec. 18; E. ½ NE. ¼, E. ½ SE. ¼ sec. 19; all of sec. 20; W. ½ sec. 21; W. ½ sec. 28; NE. ¼ N. ½, SW. ¼ SW. ¼ SW. ¼, NW. ¼ SE. ¼ sec. 29; SE. ¼ sec. 31; NE. ¼ E. ½ NW. ¼, E. ½ SW. ¼, SE. ¼ sec. 32; W. ½ sec. 33.

Township 6 north, range 7 east, Boise meridian, lots 1, 2, S. ½ NE. ¼ sec. 1.

Township 7 north, range 4 east, Boise meridian, SW. ¼ NE. ¼, S. ½ NW. ¼, SW. ¼, NW. ¼ SE. ¼, sec. 33; SW. ¼ NE. ¼ S. ½ NW. ¼ sec. 34.

Township 7 north, range 5 east, Boise meridian, lots 3, 4, SE. ¼ NW. ¼ N. ½ SW. ¼, SE. ¼ SW. ¼, SE. ¼ sec. 1; lots 1, 2, 3, S. ½ NE. ¼ S. ½ NW. ¼ sec. 2; lot 4, SW. ¼ NW ¼ sec. 4; lots 3, 4, S. ½ NW. ¼, SE. ¼ S. ½ SE. ¼ sec. 5; SE. ¼ sec. 6; NE. ¼ SE. ¼, NW. ¼, E. ½ SW. ¼, SE. ¼ sec. 7; NW. ¼, NW. ¼, SW. ¼, NW. ¼ SE. ¼, S. ½ SE. ¼ sec. 8; SE. ¼ sec. 11; NE. ¼, E. ½ NW. ¼, SW. ¼, NW. ¼ sec. 12; NE. ¼, NW. ¼, SE. ¼ sec. 13; NE. ¼ sec. 14; S. ½ sec. 15; N. ½ NE. ¼, NW. ¼, SW. ¼ sec. 17; NE. ¼, NE. ¼ NW. ¼, N. ½ SE. ¼ sec. 18; SW. ¼ NE. ¼, NW. ¼ SE. ¼, S. ½ SE. ¼ sec. 19; NE. ¼ E. ½ SW. ¼, SE. ¼ sec. 21; NW. ¼ NE. ¼, NW. ¼, SW. ¼, SE. ¼ sec. 22; all of sec. 23; all of sec. 24; NE. ¼, NW. ¼, SE. ¼ sec. 25; NW. ¼ NE. ¼, N. ½ NW. ¼, S. ½ SW. ¼ sec. 27; NE. ¼, E. ½ NW. ¼, S. ½ SE. ¼ sec. 28; W. ½ NE. ¼, E. ½ NW. ¼, lots 1, 3, 4, E. ½ SW. ¼, NW. ¼ SE. ¼ sec. 30; W. ½ NE. ¼, E. ½ NW. ¼ lot 1, NE. ¼ SW. ¼ sec. 31; E. ½ NE. ¼, SE. ¼ sec. 33; W. ½ NE. ¼, NW. ¼, SE. ¼ sec. 34; S. ½ sec. 35.

Township 7 north, range 6 east, Boise meridian, lots 3, 4, 5, 6, 7, SE. ¼ NW. ¼, N. ½ SW. ¼, E. ½ SW. ¼ sec. 6; lots 3, 4, E. ½ SW. ¼ sec. 7; lots 1, 2, E. ½ NW. ¼ sec. 18.

Township 7 north, range 7 east, Boise meridian, E. ½ sec. 25.

35 Township 8 north, range 5 east, Boise meridian, S. ½ NE. ¼ S. ½ NW. ¼, SW. ¼, SE. ¼, sec. 25; E. ½ sec. 26; SW. ¼ NE. ¼, W. ½ SE. ¼, sec. 27; S. ½ SW. ¼, sec. 32; S. ½ NW. ¼, SW. ¼, sec. 33; NW. ¼ NE. ¼, sec. 34; NE. ¼ E. ½ NW. ¼, E. ½ NW. ¼, sec. 35.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter, to wit, on the twenty-eighth day of June,

in the year nineteen hundred and five, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said Albert E. Palmer, with the knowledge and consent and upon the request of the said James T. Barber, Sumner G. Moon, and Frank Martin, did make and execute a deed granting and conveying to the said Barber Lumber Company all his right, title, and interest in and to the following described timber lands situate in the county of Boise, in the State of Idaho, to wit:

NE. ¼, E. ½ NW. ¼, E. ½ SW. ¼, section 32, township 6 north, range 6 east, Boise meridian.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter, to wit, on the second day of January, in the year nineteen hundred and six, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said Albert E. Palmer, with the knowledge and consent and upon the request of said James T. Barber, Sumner G. Moon, and Frank Martin, did make and execute a deed granting and conveying to the said Barber Lumber Company all his right, title, and interest in and to the following described timber lands situate in the county of Boise, in the State of Idaho, to wit:

Lots 1, 2, 3, section 31, township 6 north, range 6 east, Boise meridian.

And the grand jurors aforesaid, upon their oath aforesaid,
36 do further present that thereafter, to wit, on the fifth day of July, in the year nineteen hundred and five, and on the second day of February, in the year nineteen hundred and seven, respectively, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, and Albert E. Palmer, did, in the county of Boise, in the State of Idaho, and within the jurisdiction of this court, have, cause, and procure the said two deeds last hereinbefore referred to, recorded in the office of the recorder of the county of Boise, in the State of Idaho, on the respective dates aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter, to wit, on the fifteenth day of April, in the year nineteen hundred and five, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, and Albert E. Palmer did, in the county of Boise, in the State of Idaho, and within the jurisdiction of this court, have, cause, and procure the said deed from George S. Long to said Barber Lumber Company, dated the tenth day of April, in the year nineteen hundred and five, hereinbefore referred to, recorded in the office of the recorder of the county of Boise, in the State of Idaho.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter, to wit, on the twenty-second day of May, in the year nineteen hundred and five, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, and Albert E. Palmer did, at the city of Boise, in the State of Idaho, solicit, induce, and procure one L. G. Chapman, the manager of the Barber
37 Lumber Company at Boise, Idaho, to write and mail to Horace S. Rand, at Burlington, in the State of Iowa, a letter in the form and of the tenor following, to wit:

"BARBER LUMBER COMPANY,
"*Boise, Idaho, May 22, 1905.*

"Mr. H. S. RAND,
"*% Burlington Lumber Co.,*
"*Burlington, Iowa.*

"DEAR SIR: We enclose herewith quitclaim deed covering lands on the Boise River which have been purchased in your name.

"Will you kindly execute the same and have it executed by Mrs. Rand and return it to us at your convenience?

"Yours, truly,

"L. G. CHAPMAN, *Manager.*

"Enc."

And the grand jurors aforesaid, upon their oath aforesaid, do further present that thereafter, to wit, on the twenty-seventh day of July, in the year nineteen hundred and five, in furtherance, continuance, and renewal of said unlawful conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said James T. Barber, Sumner G. Moon, Frank Martin, and Albert E. Palmer, at the city of Boise, in the State of Idaho, did receive and accept the delivery of a deed dated on the twenty-fourth day of July, in the year nineteen hundred and five, made and executed by Horace S. Rand, conveying to the Barber Lumber Company, in fee
38 simple, all his right, title, and interest in and to the following-described timber lands, situate in the county of Boise, in the State of Idaho, to wit:

Township 6 N., R. 7 E., B. M., section 1, lots 3–4, S. ½ NW. ¼, N. ½ SE. ¼, SE. ¼ SE. ¼, section 12, NE. ¼ NE. ¼, T. 6 N., R. 8 E., B. M., section 5, lots 1, 2, 3, 4, section 6, lots 2, 3, 4, 5, 6, 7, SW. ¼ NE. ¼ SE. ¼ NW. ¼, section 17, W. ½ NE. ¼ E. ½ NW. ¼, section 29, NW. ¼ SW. ¼, section 30, NE. ¼, section 31, E. ½ NE. ¼, section 32, W. ½ NW. ¼ E. ½ SE. ¼, section 33, W. ½ SW. ¼.

Township 7 N., R. 7 E., B. M., section 1, lots 1, 2, 3, 4, section 2, lots 1, 2, 3, 4, S. ½ NE. ¼, S. ½ NW. ¼, section 3, lots 2, 3, SW. ¼ NE. ¼, SE. ¼, NW. ¼ E. ½ SW. ¼, W. ½ SE. ¼, section 11, E. ½ SE. ¼, section 12, NE. ¼, NW. ¼, NW. ¼, S. ½ NW. ¼, SW. ¼ SE. ¼, section 13, SW. ¼ NE. ¼, NW. ¼, section 14, E. ½ NE. ¼, NE. ¼ SE. ¼, S. ½ SE. ¼, sec-

tion 15, N. ½ SW. ¼, N. ½ SE. ¼, section 21, NE. ¼ SE. ¼, section 22, W. ½ NE. ¼, E ½ NW. ¼, N. ½ SW. ¼, SW. ¼ SW. ¼, section 23, N. ½ NE. ¼, section 24, E. ½ NE. ¼, N. ½ SE. ¼, section 26, SW. ¼ NW. ¼, W. ½ SW. ¼, section 27, NE. ¼ SE. ¼.

Township 7 N., R. 8 E., B. M., section 2, lots 4, SW. ¼ NW. ¼, W. ½ SW. ¼, section 3, lots 1, 2, S. ½ NE. ¼, SW. ¼, SE. ¼, section 4, lots 1, 2, 3, 4, S. ½ NE. ¼, S. ½ NW. ¼, SW. ¼, N. ½ SE. ¼, SW. ¼ SE. ¼, section 7, lots 1, 2, 3, 4, E. ½ NW. ¼ E. ½ SW. ¼, SE. ¼, section 8, SW. ¼, section 9, S. ½ NE. ¼, NW. ¼ NW. ¼, N. ½ SE. ¼, section 10, NE. ¼ NW. ¼, SW. ¼, SE. ¼, section 11, NW. ¼, SW. ¼, section 12, SW. ¼, SE. ¼, section 13, NW. ¼, section 14, W. ½ NE. ¼, NW. ¼, SW. ¼, W. ½ SE. ¼, section 15, N. ½ NE. ¼, N. ½ NW. ¼, S. ½ SE. ¼, section 17, SE. ¼ NE. ¼, NE. ¼ SE. ¼, S. ½ SE. ¼, section 18, lot 4, SE. ¼ SW. ¼, S. ½ SE. ¼, section 19, NW. ¼ NE. ¼, S. ½ NE. ¼, lots 1, 2, 3, E. ½ NW. ¼, NE. ¼ SW. ¼, N. ½ SE. ¼, section 20, NW. ¼ NE. ¼, S. ½ NE. ¼, SW. ¼, NW. ¼ NE. ¼, SE. ¼, section 21, NE. ¼, NE. ¼ NW. ¼, S. ½ NW. ¼, NW. ¼, SW. ¼, section 22, NE. ¼, NW. ¼, SW. ¼, SE. ¼, section 23, N. ½ NE. ¼, NE. ¼ NW. ¼, S. ½ NW. ¼, SW. ¼, section 24, S. ½ NE. ¼, NW. ¼, N. ½ SW. ¼, SE. ¼ SW. ¼, SE. ¼, section 25, NE. ¼, NW. ¼, SW. ¼, SE. ¼, section 26, SE. ¼ NE. ¼, N. ½ NW. ¼,
39 SW. ¼ NW. ¼, NW. ¼ SW. ¼, NE. ¼ SE. ¼, S. ½ SE. ¼, section 27, NE. ¼, NW. ¼ N ½ SW. ¼, SE. ¼, section 28, NE. ¼ N. ½ SE. ¼, section 29, SW. ¼ SW. ¼, section 30, lots 1, 2, 3, 4, SE. ¼ SW. ¼, S. ½ SE. ¼, section 31, NE. ¼, lots 1, 2, E. ½ NW. ¼, SE. ¼, section 32, NE. ¼, NW. ¼, SW. ¼, SE. ¼, section 33, SW. ¼ section 34, E. ½ NE. ¼, N. ½ SE. ¼, section 35, NE. ¼.

Containing 15,496 65/100 acres.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) WILLIAM R. HARR,
(Signed) PEYTON GORDON,
Special Assistants to the Attorney-General.

WILLIAM M. BRIGGS,
Foreman of the United States Grand Jury.

40 The following are the names of the witnesses examined before and by the grand jury in the above case:

G. D. Hoseley, T. F. Halveston, H. N. Coffin, B. F. Olden, Albert Nugent, Junius Wright, J. T. Morrison, J. J. Keane, C. W. Ballentyne, Mary Link, Harry Clyne, Mack Gillum, Gustave A. Link, Dean West, Louisa B. West, Samuel Greig, Sarah Greig, Oral Dye, William Pearson, Louis K. Burns, E. E. Garrett, Margaret Pearson, Frank Cooper, Louisa E. Butler, George W. Butler, Louis Nibler, Arthur Andersen, Andrew Joplin, Rice J. Harbaugh, M. A. Zapp, George S. Long, A. G. Foster, Sherman Glenn, H. S. Rand, Edw. Brisbin, A. B. Campbell, L. S. Dille, C. M. Wilmot, E. A. Wilmot, W. F. Wilmot, C. C. Blevin, Leon S. Simpson, Mrs. E. J. Phelps, Walter S. Harrison, Joseph M. Hollister, Lenora Hollister, T. S.

Weston, Wm. A. Coleman, Mary J. Martin, Nettie Weston,
41 T. B. Martin, L. R. Dukes, W. H. Gibbard, W. A. Ross, Patrick H. Downs, John I. Wells, Harry S. Worthman, W. W. Abrams, E. N. Seale, E. E. Butler.

Bail of Defendant Martin fixed at $2,500.00, his own recognizance. Each of the other defendants $5,000.00, with sufficient sureties.

(Signed) DIETRICH, *Judge.*

(Endorsed:) Filed April 14, 1908. A. L. Richardson, clerk.

42 *Notice.*

In the District Court of the United States within and for the Central Division of the District of Idaho.

THE UNITED STATES OF AMERICA
vs.
JAMES T. BARBER, SUMNER G. MOON, FRANK Martin, and Albert E. Palmer.

To C. H. Lingenfelter, esq., United States district attorney, Boise, Idaho:

You will please take notice that at the opening of the September term of the above entitled court at Boise City, Idaho, to wit, on the 14th day of September, 1908, at the hour of 10 o'clock a. m., or as soon as counsel can be heard, we, the undersigned attorneys for defendant Frank Martin will request and insist upon an immediate trial of the said defendant Frank Martin in said cause.

J. H. HAWLEY,
J. C. RICE,
K. I. PERKY,
Attorneys for defendant Frank Martin, residence, Boise, Idaho.

Due service of the foregoing admitted this 1st day of August, 1908.

C. H. LINGENFELTER,
United States District Attorney,
By VAN W. HASBROUCK,
Assistant.

(Endorsed:) Filed August 1, 1908. A. L. Richardson, clerk.

43 *Motion.*

In the District Court of the United States within and for the Central Division of the District of Idaho.

THE UNITED STATES OF AMERICA
vs.
JAMES T. BARBER, SUMNER G. MOON, FRANK Martin, and Albert E. Palmer. } Motion.

To the Honorable Frank S. Dietrich, judge of the United States District Court, District of Idaho:

Comes now C. H. Lingenfelter, United States attorney for the District of Idaho and on behalf of the plaintiff, the United States

of America, moves the honorable the above-entitled court to grant to the plaintiff a continuance of the above-entitled cause until the next regular term of the above-entitled court at Boise, for the reasons specifically set forth in the affidavit hereto attached and the records and files in this action.

C. H. LINGENFELTER,
United States District Attorney
for the District of Idaho.

44 *Notice and motion for continuance.*

In the District Court of the United States within and for the Central Division of the District of Idaho.

THE UNITED STATES OF AMERICA *vs.* JAMES T. BARBER, SUMNER G. MOON, FRANK MARTIN, and ALBERT E. PALMER.	Notice and motion for continuance.

To J. H. Hawley, J. C. Rice, and K. I. Perky, attorneys for defendant Frank Martin, Boise, Idaho:

Whereas on the 1st day of August, 1908, there was filed in the above-entitled court, by the above-named attorneys, a notice to the undersigned United States attorney, setting forth that at the opening of the September term of the above-entitled court at Boise City, Idaho, to wit, on the 14th day of September, 1908, at the hour of 10 o'clock a. m., or as soon as counsel can be heard, the above-named attorneys for the defendant Frank Martin would request and insist upon an immediate trial of the said Frank Martin in said cause.

You will please take notice that upon the calling of said motion aforesaid the undersigned United States district attorney, attorney for plaintiff, will move the court for a continuance of the above-entitled cause, for the term, and oppose the granting of the motion for immediate trial of the said Frank Martin on the grounds contained in the affidavit hereto attached and made a part of this motion and herewith served upon you. On the hearing of said motion the plaintiff will use the above motion and notice, the affidavit attached, and the files and records now on file and of record in the
45 above-entitled cause or so much thereof as may be necessary.

C. H. LINGENFELTER,
United States District Attorney.

Due service of the foregoing motion, notice, and affidavit attached admitted this 9th day of September, A. D. 1908.

J. H. HAWLEY,
J. C. RICE,
K. I. PERKY,
Attorneys for Frank Martin, Deft.

46 *Affidavit for continuance.*

In the District Court of the United States within and for the Central Division of the District of Idaho.

THE UNITED STATES OF AMERICA *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, and Albert E. Palmer.	Affidavit for continuance.

STATE OF IDAHO,
County of Ada, ss:

C. H. Lingenfelter, being first duly sworn on oath, deposes and says that he is the United States district attorney for the district of Idaho and makes this affidavit for and on behalf of the United States of America, the plaintiff in the above-entitled cause; that affiant received notice from the attorneys for the defendant Frank Martin, in the above-entitled cause, on the first day of August, 1908, that they would request and insist upon an immediate trial of the said defendant Martin in said cause, and that said request would be presented to the above-entitled court on the 14th day of September, at 10 o'clock a. m., or as soon as counsel could be heard; that immediately upon receipt of such notice this affiant notified the honorable Attorney-General of the United States, at Washington, D. C., of the service of such notice; that in reply thereto this affiant received a telegram from the Attorney-General stating that he, the said Attorney-General, intends to appoint special counsel for trial of this cause, as was done in other cases, and represents strongly that it will be impossible for such counsel to try such case in September,
47 which such telegram is hereto attached and made a part of this affidavit, the same as if here fully set out; that thereafter affiant's assistant, Van W. Hasbrouck, received from the Hon. Charles J. Bonaparte, Attorney-General for the United States of America, reiterating the facts set forth in said telegram, which said letter is hereto attached and made a part of this affidavit the same as if fully set out herein; that affiant states that the Attorney-General has appoint' special counsel to take charge of the above matter in the persons of his special assistants, Mr. Peyton Gordon and Mr. Sylvester R. Rush; that affiant received a letter from said Peyton Gordon, special assistant to the Attorney-General, and one of the counsel appointed by the Attorney-General to take charge of said case, in which it is stated to be the fact that said Sylvester R. Rush is preparing briefs in several government cases, which he is to argue in the Circuit Court of Appeals for the Eighth Circuit, at Denver, in September, and that the cases in which he is engaged are at present set to be heard September 15th; that said Peyton Gordon is engaged at Madison, Wisconsin, on a government case and will be until after the middle of September; that the said letter of said Peyton Gordon is hereto attached and made a part of this affidavit the same as if

herein fully set out; that affiant states that he is wholly unfamiliar with this case, having but recently assumed the office of United States attorney for this district, and that he is wholly unprepared to go to trial of the same at this term of the court, and that it was not the intention to have this affiant represent the Government in this behalf; that heretofore the Government has been diligently endeavoring to remove the defendants Barber and Moon to this district for trial in order to try all of the defendants together, as the matter in-
48 volves a charge of conspiracy to defraud the Government; that said defendants Barber and Moon have resisted said removal, and the action on said proceedings for removal have but recently been determined adversely to the Government and the Government is still proceeding against said defendants; that the Government has been using all due diligence to bring this matter to trial and is so doing at this time, but that the forcing of a trial of the said Frank Martin at this time would work great injury upon the plaintiff, the United States of America, and great embarrassment in the premises through no fault, negligence, or delay on the part of the said plaintiff.

C. H. LINGENFELTER,
United States Attorney for the District of Idaho.

Subscribed and sworn to before me this 9th day of September, A. D. 1908.

A. L. RICHARDSON, *Clerk.*

49 [56 collect Govt.]

HOTEL ASPINWALL,
Lenox, Mass., Aug. 6, 1908.

UNITED STATES ATTORNEY, *Boise, Ida.*

You are instructed to oppose motion for trial of Martin. State to court that Attorney-General intends to appoint special counsel for trial for these cases, as was done in other case, and represents strongly that it will be absolutely impossible for such counsel to try cases in September.

BONAPARTE.

9 a. m.

50 OFFICE OF THE ATTORNEY-GENERAL, WASHINGTON, D. C.,
HOTEL ASPINWALL,
Lenox, Mass., August 14, 1908.

VAN W. HASBROUCK, Esq.,
Assistant United States Attorney,
Boise, Idaho.

SIR: Referring to your letter of the 3rd instant in regard to the proposed motion for immediate trial in the case of Frank Martin, I beg to say that United States Attorney Lingenfelter was, both by

telegram and letter, advised that he should resist this application on the ground that the Government proposes to appoint special counsel in these cases, and that it will be entirely impracticable to go on with Martin's immediate trial. Definite instructions on this point having been sent to Mr. Lingenfelter, I presume that you have before this received his instructions in the premises, and that the directions given by the department will be carefully carried out.

Very respectfully,

CHARLES J. BONAPARTE,
Attorney-General.

51 AUG. 18, 1908.

The ATTORNEY-GENERAL,
Lenox, Mass.

SIR: Referring to your letter of the 14th, 59512–11, in re proposed motion for immediate trial in the case of Frank Martin, I have the honor to inform you that this office is advised as to your wishes in the matter and will oppose such motion according to your instructions. The hearing on this motion will be had, as previously advised, on the convening of the September term of the court here at Boise; that is, on the 14th of September, or as soon thereafter as counsel for defendant can be heard.

Immediately upon receipt of your telegram, setting forth the inability of the Government to proceed, and that special counsel would be appointed to conduct the cases, I notified the court of the filing of the motion and the position of the Government in reference thereto. At the proper time an affidavit will be presented to the court setting up the facts as contained in your communications.

Respectfully,

_____ _____,
Assistant U. S. Attorney

52 MADISON, *Wisconsin, August 26, 1908.*

Mr. CHARLES H. LINGENFELTER,
United States Attorney, Boise, Idaho.

SIR: I beg to acknowledge receipt of your telegram advising me that the motion for severance and trial of Frank Martin will be called for hearing on September 14th.

The Attorney-General has assigned Mr. Sylvester R. Rush and me to take charge of this case, together with the case of Barber, Moon, and Palmer. Mr. Rush is preparing briefs in several cases which he is to argue in the Circuit Court of Appeals for the 8th Circuit at Denver in September. The cases in which he is engaged are at present set to be heard September 15th. I am engaged here on a government case and will be until after the middle of September,

and it will be absolutely impossible for us to try Mr. Martin at the September term at Boise, much less prepare his case for trial.

Will you endeavor to have this motion go over until the next term of court at Boise, and if there is any objection to the hearing of the motion going over advise me at once and I will be at Boise September 14th to oppose the same. I am very busy here and do not wish to take that long trip simply to argue a motion unless it is absolutely necessary.

Very respectfully, PEYTON GORDON,
Special Assistant to the Attorney-General.

Write or wire me at Madison, Wis., c/o U. S. attorney.

(Endorsed): Filed Sept. 9, 1908. A. L. Richardson, clerk.

53 *Bond of Defendant Frank Martin.*

In the District Court of the United States within and for the Central Division, District of Idaho.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
FRANK MARTIN ET AL., DEFENDANTS.

Be it remembered that on this 17th day of September, *A.* 1908, personally came Frank Martin and acknowledged himself to owe to the United States of America the sum of two thousand and five hundred dollars, to be levied upon his goods and chattels, lands, and tenements if default be made in the condition following, to wit:

The condition of this recognizance is such that if the said Frank Martin shall personally appear before the District Court of the United States in and for the District of Idaho, Central Division, in the city of Boise, State of Idaho, and on the 17th day of September, 1908, being a day of regular term of said court, and from day to day thereafter, and then and there to answer to the indictment pending therein, for conspiracy to defraud the United States, under section 5440 R. S., U. S., and known as case No. 451, and then and there abide the further order of said court, and not to part without leave, then this recognizance to be void, otherwise to be and remain in full force and virtue.

FRANK MARTIN.

Witnesses:
J. H. HAWLEY.
A. L. RICHARDSON.

Approved:
FRANK S. DIETRICH, *Judge.*

(Endorsed:) Filed Sept. 17, 1908. A. L. Richardson, clerk.

54 *Affidavit in opposition to motion.*

In the Circuit Court of the United States, Ninth Judicial Circuit for the District of Idaho, Central Division.

THE UNITED STATES OF AMERICA *vs.* JAMES T. BARBER, SUMNER G. MOON, FRANK MARTIN, and ALBERT E. PALMER.	Affidavit of Peyton Gordon in opposition to motion that case be set for trial at present term of court.

STATE OF IDAHO,
County of Ada, ss:

Peyton Gordon, being first duly sworn, on oath deposes and says, that he is a special assistant to the Attorney-General of the United States; that on or about the 15th day of August, 1908, he received instructions from the Attorney-General to take charge of the preparation and trial of the above-entitled case now pending on the criminal docket of this court; that about the same date Sylvester R. Rush, also a special assistant to the Attorney-General, was directed by the Attorney-General to assist in the preparation and trial of said case; that prior to said assignment affiant was engaged on behalf of the United States in a proceeding pending in the United States District Court for Western District of Wisconsin for the removal, under section 1014 of the Revised Statutes of the United States, of James T. Barber and Sumner G. Moon, two of the defendants in said case, to within the jurisdiction of this court for trial upon an indictment now pending in this court, charging the said Barber and Moon of conspiring to defraud the United States; and that since said assignment affiant has been actually engaged in a proceeding in
55 the said District Court for the Western District of Wisconsin for the removal of said Barber and Moon to within the jurisdiction of this court for trial upon the indictment in this case, in which they are jointly indicted with the said Frank Martin, and which case the said Frank Martin now moves the court to set for trial at the present term thereof; that affiant arrived at Boise, Idaho, September the 13th, 1908, for the purpose of being present on behalf of the United States as its counsel at the taking of testimony to be used in the said Wisconsin court in resisting an order of said court for the removal of said Barber and Moon to this jurisdiction for trial upon the indictment last hereinbefore referred to; and that affiant has been actually engaged since his arrival at Boise at the taking of said testimony; and that September the 18th, 1908, is the date set for a hearing upon said proceedings at Eau Claire, Wisconsin; that in compliance with the suggestion of the court, before whom the said motion of the said Martin was made, and immediately there-

after, affiant conferred with Mr. James H. Hawley, counsel for the said Frank Martin, with the view of agreeing upon a date for the trial of said Martin that would be acceptable to all parties concerned; that at said conference affiant stated to Mr. Hawley and the said Frank Martin that in view of the fact that he had been advised that the said Sylvester R. Rush had ever since his assignment to take part in said case been actually engaged as counsel for the United States in other cases in which the United States was a party, and that said Sylvester R. Rush would be actually engaged on behalf of the United States in arguing a case in the United States Circuit Court of Appeals at Denver on the following day, to wit, September 14th, 1908, and would be actually engaged, as counsel for the United
56 States, in other cases then pending in the federal court until about November the first, 1908, and that it would be impracticable for affiant to agree to the setting of said case for trial on a day between the first and the fourth week in October, 1908, as had been suggested by the court; and that until affiant would be able to advise counsel for the said Frank Martin definitely on the matter it would be necessary for affiant to communicate with the said Sylvester R. Rush and be informed with certainty as to the engagements of Mr. Rush in other federal courts; that thereafter on the 16th of September, 1908, affiant sent the following telegram to Mr. Rush:

"BOISE, IDAHO, *September 16, 1908.*

"S. R. RUSH,

"*Special Assistant to Attorney-General,*

"*Brown Palace Hotel, Denver, Colorado.*

"Upon hearing Martin motion for trial at this term of court, which necessarily means a severence, Judge Dietrich on fourteenth decided that Martin was entitled to a speedy trial, and directed that we consult defendants' counsel with a view of agreeing upon a day between the first and the last week of October for trial. I urged that I was engaged in a Wisconsin court on same indictment and that we had been recently assigned to the case, and that in view of our other engagements it would be impossible to prepare the case for trial in the limited time suggested by the court. Also stated that you were actually engaged in trial of a government case in the Circuit Court of Appeals at Denver and to my knowledge would be engaged in other government cases already set for hearing until about November first. As I was not advised as to the exact details of your engagements, was somewhat embarrassed and consequently unable to state to the court frankly the earliest date we could give to the preparation of this case consistent with other cases of equal importance so as not to be in the same trouble with other federal courts as here. The court has deferred actual setting of the case until I can hear from you. Wire me immediately what your engagements are and the earliest possible date you can give to the preparation of this case for trial, so that I may present the same to the court. Of course after we have presented this to the court I trust that the court in setting the case

will see that it is but reasonable and fair to both sides and render our predicament less embarrassing.

"GORDON."

That in response to said telegram, at 8.30 o'clock p. m. of September 18th, 1908, affiant received from Mr. Rush a telegram to the
57 effect that he had finished the argument in the case before the Circuit Court of Appeals at Denver that day and that witnesses were already subpœnaed in a case to be heard at Omaha the first week in October, and that the trial of said case would take about three weeks, and to set the case of Martin for trial early in November, which said telegram is attached hereto and made a part hereof.

PEYTON GORDON.

Subscribed and sworn to before me this 17th day of September, A. D. 1908.

A. L. RICHARDSON, *Clerk.*

58 [38 collect Government.]

BO DENVER, COLO., *Sept. 16–'08.*

GORDON, *Special Asst. Atty General,*
Idanha Hotel, Boise, Idaho.

Argument finished here to-day. Witnesses already subpœnaed in case at Omaha first week in October. Case will take about three weeks. Set case early in November.

RUSH.

(Endorsed:) Filed Sept. 17, 1908. A. L. Richardson, clerk.

59 *Demurrer.*

In the District Court of the United States, Central Division of the District of Idaho.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SUMNER G. MOON AND JAMES T. BARBER, DEFENDANTS. } Demurrer.

Comes now the defendants and file this their demurrer to the indictment in the above-entitled action and for grounds of demurrer allege:

1st. That the indictment does not state facts sufficient to constitute a public offense.

2nd. That the facts stated in the indictment do not constitute any violation of the Constitution or laws of the United States.

3rd. That the indictment shows upon its face that the action is barred by the provisions of sec. 1044 of the Revised Statutes of the United States.

(a) The defendants demur to the first count set forth in said indictment and for ground of demurrer allege that the said count does not state facts sufficient to constitute a public offense.

(b) That the facts stated in said count and the cause of action alleged therein is barred by the provisions of section 1044, Revised Statutes of the United States.

(a) The defendants demur to the second count set forth in said indictment for the reason that said count does not state facts sufficient to constitute a public offense.

60 (b) That said count does not state the agreement therein alleged to be fraudulent nor the terms thereof or the means by which the fraudulent purpose therein alleged was to be accomplished.

The defendants demur to the third count set forth in said indictment and for ground of demurrer allege:

(a) That the facts set forth in said third count of said indictment do not constitute any public offense.

(b) That the facts set forth in said count do not constitute any violation of the Constitution or any law of the United States.

(c) That the facts stated and the cause of action set forth in said third count of the indictment is barred by the provisions of sec. 1044 of the Revised Statutes of the United States.

ALFRED A. FRASER,
C. T. BUNDY,
J. H. HAWLEY,
Attorneys for the Defendants.

Service by copy admitted this 1st day of July, 1909.

C. H. LINGENFELTER,
U. S. Attorney.

(Endorsed:) Filed, July 1, 1909. A. L. Richardson, clerk.

61 *Demurrer to indictment.*

United States district court, central division, district of Idaho.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES T. BARBER, SUMNER G. MOON, FRANK MARTIN, and Albert E. Palmer, defendants.

Now comes the above named defendants, James T. Barber and Sumner G. Moon, and each for himself separately demurrs to the fourth count of the indictment herein filed and returned on the fourteenth day of April, 1908, for the reason and upon the grounds that it appears upon the face of said indictment and said fourth count that such count does not state facts sufficient to constitute an offense against or under the laws of the United States.

A. A. FRASER,
C. T. BUNDY,
JAS. H. HAWLEY,
Attorneys for Defendants, Moon and Barber.

(Endorsed:) Filed December 15, 1909. A. L. Richardson, clerk.

62 *Plea in abatement.*

In the district court of the United States, within and for the central division of the district of Idaho.

UNITED STATES OF AMERICA *vs.* JAMES T. BARBER, SUMNER G. MOON, FRANK MARTIN, and ALBERT E. PALMER.	Plea in abatement.

Comes now the said James T. Barber by his attorneys, C. T. Bundy, Alfred A. Fraser, and J. H. Hawley, and, having read the said indictment, by leave of the court also first had and obtained, says the United States ought not to further prosecute this indictment against him, as to the matters and things and charges set forth in counts Nos. 1 and 4 of said indictment against him, the said James T. Barber, because he says the indictment was found and filed on the 14th day of April, 1908, and that said indictment was not found or filed or information instituted in the proper or any other court within three years after the commission of the offenses in said counts of said indictment specified, and because he says the offense is barred as to each count by the provisions of section 1044 of the Revised Statutes of the United States of America, in this, that more than three years have elapsed between the date of the commission of the alleged crime charged in each of said counts and the date of the finding of the said indictment, and in this behalf the defendant, James T. Barber, alleges that during all of said times between the commission of said alleged crime, to wit, the first day of Sep-
63 tember, 1901, up to the present date, and the filing of this plea, this defendant, the said James T. Barber, was a citizen and resident of the county of Eau Claire in the State of Wisconsin, and did have his home and usual and well known place of abode at Eau Claire, in the county of Eau Claire, State of Wisconsin, and was at all times subject to process of this court, and at no time during this period of time was he, the said James T. Barber, a fugitive from justice, or was he fleeing from justice, and that the said James T. Barber did not, at any time between the dates of the commission of the offense alleged and charged in each of the courts as aforesaid and the finding of said indictment, leave his home and well known place of abode in the city of Eau Claire, Wisconsin, with intent to avoid detection or punishment for any public offense against the United States, or at all.

Wherefore, he prays judgment that he may be dismissed and discharged by this court from the premises as to each of the counts No. 1 and 4 in the indictment above specified.

C. T. BUNDY,
ALFRED A. FRASER,
J. H. HAWLEY,
Attorneys for Defendant.

I hereby certify that, in my opinion, the plea herein stated and set forth is well founded in point of law.

ALFRED A. FRASER,
Attorney for Defendant.

(Endorsed:) Filed Dec. 16, 1909. A. L. Richardson, clerk.

64 *Plea in abatement.*

In the District Court of the United States within and for the Central Division of the District of Idaho.

UNITED STATES OF AMERICA *vs.* JAMES T. BARBER, SUMNER G. MOON, FRANK MARTIN, and ALBERT E. PALMER.	Plea in abatement.

Comes now the said Sumner G. Moon, by his attorneys, C. T. Bundy, Alfred A. Fraser, and J. H. Hawley, and, having read the said indictment, by leave of the court also first had and obtained, says the United States ought not to further prosecute this indictment against him, as to the matters and things and charges set forth in counts No. 1 and 4 of said indictment against him, the said Sumner G. Moon, because, he says, the indictment was found and filed on the 14th day of April, 1908, and that said indictment was not found or filed or information instituted in the proper or any other court within three years after the commission of the offenses in said counts of said indictment specified, and because, he says, the offense is barred as to each count by the provisions of section 1044 of the Revised Statutes of the United States of America, in this, that more than three years have elapsed between the date of the commission of the alleged crime charged in each of said counts and the date of the finding of the said indictment; and in this behalf the defendant, Sumner G. Moon, alleges that during all of said times between the commission of said alleged crime, to wit, the first day of Sep-
65 tember, 1901, up to the present date, and the filing of this plea, this defendant, the said Sumner G. Moon, was a citizen and resident of the county of Eau Claire, in the State of Wisconsin, and did have his home and usual and well-known place of abode at Eau Claire, in the county of Eau Claire, State of Wisconsin, and was at all times subject to process of this court, and at no time during this period of time was he, the said Sumner G. Moon, a fugitive from justice, or was he fleeing from justice, and that the said Sumner G. Moon did not at any time between the dates of the commission of the offense alleged and charged in each of the courts, as aforesaid, and the finding of said indictment leave his home and well-known place of abode in the city of Eau Claire, Wisconsin, with intent to avoid detection or punishment for any public offense against the United States or at all.

Wherefore he prays judgment that he may be dismissed and discharged by this court from the premises as to each of the counts No. 1 and 4 in the indictment above specified.

C. T. BUNDY,
ALFRED A. FRASER,
J. H. HAWLEY,
Attorneys for Defendant.

I hereby certify that, in my opinion, the plea herein stated and set forth is well founded in point of law.

ALFRED A. FRASER,
Attorney for Defendant.

(Endorsed:) Filed Dec. 16, 1909. A. L. Richardson, clerk.

66 *Demurrer to plea entitled plea in abatement.*

In the District Court of the United States within and for the Central Division of the District of Idaho.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, Albert E. Palmer, defendants.	No. 451. Demurrer to plea entitled plea in abatement.

And A. B. Jackson and Peyton Gordon, special assistants to the Attorney-General of the United States of America, who prosecute for the said United States in this behalf, as to the said plea of the said James T. Barber by him pleaded herein, say that the same and the matters therein contained, in so far as they relate to the fourth count of the indictment against him, the said James T. Barber, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said United States from prosecuting the said fourth count of the said indictment against him, the said James T. Barber, and that the said United States is not bound by law to answer the same; and this the said A. B. Jackson and Peyton Gordon, who prosecute as aforesaid, are ready to verify.

Wherefore, for want of sufficient plea in this behalf, the said A. B. Jackson and Peyton Gordon, for the said United States, pray judgment, and that the said James T. Barber may be convicted of the premises of the said indictment specified.

A. B. JACKSON,
PEYTON GORDON,
Special Assistants to the Attorney-General.

(Endorsed:) Filed Dec. 16, 1909. A. L. Richardson, clerk.

67 *Demurrer to plea entitled plea in abatement.*

In the District Court of the United States within and for the Central Division of the District of Idaho.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, Albert E. Palmer, defendants.	No. 451. Demurrer to plea entitled plea in abatement.

And A. B. Jackson and Peyton Gordon, special assistants to the Attorney-General of the United States of America, who prosecute for the said United States in this behalf, as to the said plea of the said Sumner G. Moon by him pleaded herein, say that the same and the matters therein contained, insofar as they relate to the fourth count of the indictment against him, the said Sumner G. Moon, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said United States from prosecuting the said fourth count of the said indictment against him, the said Sumner G. Moon, and that the said United States is not bound by law to answer the same; and this the said A. B. Jackson and Peyton Gordon, who prosecute as aforesaid, are ready to verify.

Wherefore, for want of sufficient plea in this behalf, the said A. B. Jackson and Peyton Gordon, for the said United States, pray judgment and that the said Sumner G. Moon may be convicted of the premises of the said indictment specified.

A. B. JACKSON,
PEYTON GORDON,
Special Assistants to the Attorney-General.

(Endorsed:) Filed Dec. 16, 1909. A. L. Richardson, clerk.

68 *Stipulation.*

In the District Court of the United States, Central Division of the District of Idaho.

UNITED STATES, PLAINTIFF, *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, and Albert E. Palmer, defendants.	Stipulation.

The court, by order duly filed, having sustained the demurrer and plea of the defendants James T. Barber and Sumner G. Moon to the fourth count of the indictment heretofore returned and filed in the above-entitled cause, it is hereby stipulated as follows:

That on demurrer of complainant to the plea interposed by said defendants to the fourth count of said indictment, the following facts shall be deemed stipulated and considered with the same force and effect as though they were fully set out in said plea:

A. That since September 1, 1901, and up to the time of making this stipulation, said defendants James T. Berber and Sumner G. Moon have resided and had their home and usual place of abode and place of business in the city of Eau Claire, Eau Claire County, State of Wisconsin, and during all of said times were and are citizens of the State of Wisconsin, and at no time within said period have defendants or either of them been without the territorial limits of the United States.

69 B. That a prior indictment was issued out of said court against said two defendants et al. charging the same offense, which indictment was filed in the State of Wisconsin, and on complaint therein said defendants were arrested on or about October 1, 1907, which arrest was made by defendants voluntarily appearing before the committing magistrate, as requested by the U. S. district attorney of Wisconsin, and that said defendants have voluntarily appeared from time to time before committing and removal magistrate, in State of Wisconsin, in the above-entitled proceedings, as and when requested.

C. That the defendant James T. Barber was never within the State of Idaho until the first of August, 1902, since which latter date he has visited and transacted business in said State upon the following dates: August 31, 1902; February 6, 1903; April 9, 1903; July 24, 1903; February 5, 1905; November 11, 1905; March 22, 1906; June 20, 1906; December 8, 1906.

And the defendant Sumner G. Moon was never in the State of Idaho until June 7, 1902; again on August 31, 1902; September 5, 1902; February 5, 1905; on March 22, 1906; and on June 20, 1906.

D. That on December 12, 1906, the said James T. Barber departed from the State of Idaho and returned to his home at Eau Claire, Wisconsin, and has not since that date been within the State of Idaho, and that the said Sumner G. Moon, on June 27, 1906, departed from the State of Idaho and returned to his home at Eau Claire, Wisconsin, and has not since that date been within the State of Idaho.

70 That at no time on or since September 1, 1901, and up to the time of making this stipulation have the said defendants or either of them left his home and well-known place of abode in the city of Eau Claire, Wis., with the intention of avoiding arrest, detection, or punishment for any public offense or misdemeanor against the United States or the State of Idaho, or any other State.

Dated this 21st day of December, 1909.

A. B. JACKSON,
PEYTON GORDON,
Special Assistants to Attorney-General,
Solicitors for Complainant.
C. T. BUNDY.
A. A. FRASER.
J. H. HAWLEY.

(Endorsed:) Filed Dec. 21, 1909. A. L. Richardson, clerk.

71 *Stipulation.*

In the District Court of the United States, Central Division of the District of Idaho.

UNITED STATES, PLAINTIFF, *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, and Albert E. Palmer, defendants.	Stipulation.

The court, by order duly filed, having sustained the demurrer and plea in abatement of the defendants James T. Barber and Sumner G. Moon to the fourth count of the indictment heretofore returned and filed in the above entitled action, it is hereby stipulated as follows:

1st. That a nolle and order of dismissal shall, under the consent of the court, be entered in the above entitled proceedings as to counts numbered one, two, and three thereof.

2nd. That the demurrer and plea in abatement of the defendants to the fourth count of said indictment shall be heard and determined together, and that the order or ruling made on either shall be deemed to have been made on both.

Dated December 21, 1909.

A. B. JACKSON and
PEYTON GORDON,
Special Assistants to Attorney-General.
C. T. BUNDY,
A. A. FRASER, and
J. H. HAWLEY,
Solicitors for Defendants
James T. Barber and Sumner G. Moon.

(Endorsed:) Filed Dec. 21, 1909. A. L. Richardson, clerk.

72 *Journal entries.*

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Monday, the 14th day of September, 1908.

Present: Hon. Frank S. Dietrich, judge.

THE UNITED STATES *vs.* JAMES T. BARBER ET AL.	No. 451. Conspiracy.

On this day the defendant, Frank Martin, came into court in person and by his attorney, Jas. H. Hawley, esq., to be arraigned upon the true bill of indictment heretofore presented against him by the grand jury, the district attorney being present. In answer to the court the defendant stated his true name to be Frank Martin. The

formal reading of the indictment was waived and Defendant Martin furnished with a true copy thereof by order of court at the expense of the United States; and the said defendant, Frank Martin, stating that he was ready to plead and being asked for his plea pleaded that he is not guilty of the offense charged in the indictment. Thereupon, said cause came on to be heard upon the written notice and request of the said defendant, Martin, for an immediate trial, and upon the motion of plaintiff for a continuance of said cause, and after argument by Jas. H. Hawley, esq., on behalf of said defendant, and by C. H. Lingenfelter, U. S. district attorney and Peyton Gordon, esq., special assistant district attorney, on behalf of plaintiff, the court ordered that said motion for a continuance be denied.

73 Thursday, the 17th day of September, 1908.

THE UNITED STATES *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, and Albert E. Palmer.	No. 451. Conspiracy.

Ordered that the trial of this cause as to the defendant Frank Martin, be, and the same is hereby, fixed and set for November 4th, 1908, at 10 o'clock a. m.

Wednesday, the 4th day of November, 1908.

THE UNITED STATES *vs.* JAMES T. BARBER, SUMNER G. MOON, Frank Martin, and Albert E. Palmer.	No. 451. Conspiracy.

Now came the assistant U. S. district attorney, with the defendant, Frank Martin, and his counsel, and thereupon, on motion of said assistant U. S. district attorney, defendant's counsel consenting thereto, it was ordered that this cause be, and the same is hereby, dismissed as to the defendant Frank Martin, and that his bail be exonerated.

Wednesday, the 8th day of September, 1909.

THE UNITED STATES *vs.* JAMES T. BARBER ET AL.	No. 451. Conspiracy.

74 On motion of Peyton Gordon, esq., assistant to the Attorney-General, Alfred A. Fraser, esq., of counsel for defendants, being present. It is ordered that this cause be set for trial on Monday,

December 6, 1909, at 10 o'clock a. m., and by agreement of counsel the demurrer to the indictment herein is set for hearing on that day.

Saturday, the 4th day of December, 1909.

THE UNITED STATES
vs.
JAMES T. BARBER ET AL. } No. 451. Conspiracy.

By agreement of counsel for the respective parties herein, it is ordered that the demurrer to the indictment herein be set for hearing on the 15th inst. at 10 o'clock a. m., and ordered that said cause be set for trial on the 27th inst. at 10 o'clock a. m.

Wednesday, the 15th day of December, 1909.

THE UNITED STATES
vs.
JAMES T. BARBER ET AL. } No. 451. Conspiracy.

On motion of counsel for defendants, it is ordered that said defendants have leave to file a demurrer to the 4th count in the indictment herein, thereupon said cause came on to be heard before Hon. Robert S. Bean upon the demurrer to the indictment in said cause, Peyton Gordon, assistant to the Attorney-General, appearing as counsel on behalf of plaintiff, and C. T. Bundy and Alfred A. Fraser, esqs., appearing as counsel on behalf of defendants.

The court was addressed by C. T. Bundy, esq., on behalf of defendants, followed by Peyton Gordon, assistant to the
75 Attorney-General on behalf of plaintiff, during which the court adjourned the further hearing on said demurrer until to-morrow, the 16th inst., at 10 o'clock a. m.

Thursday, December 16th, 1909.

THE UNITED STATES
vs.
JAMES T. BARBER ET AL. } No. 451. Conspiracy.

The argument on the demurrer to the indictment herein adjourned on yesterday for further hearing was this day resumed, Peyton Gordon, assistant to the Attorney-General, continued the argument on behalf of plaintiff and against said demurrer. The argument was then closed by C. T. Bundy and Alfred A. Fraser, esq., on behalf of defendants, and said demurrers were submitted and taken under advisement by the court, with leave to defendants, by agreement of counsel for the respective parties, to file plea in abatement and motion to quash the indictment on account of duplicity.

76 *Judgment.*

Tuesday, the 21st day of December, 1909.

THE UNITED STATES
vs.
JAMES T. BARBER ET AL. } No. 451. Conspiracy.

Now came the attorneys for the respective parties herein and thereupon the demurrer to the third count in the indictment herein is withdrawn by the defendants. The demurrer to the second count of the indictment is confessed by complainant, and it is ordered that the demurrer and plea in abatement to the first count of the indictment be and is hereby overruled and denied. It is further ordered that plea in abatement to the fourth count of the indictment be and is hereby sustained. Thereupon counsel for the Government moved and asked that the three first counts of the indictment in the above entitled action be nollied; thereupon said motion was granted and the cause dismissed; all in accordance with the direction of Hon. Robert S. Bean, district judge, who heretofore heard and took under advisement said demurrer and plea in abatement.

Monday, the 27th day of December, 1909.

THE UNITED STATES
vs.
JAMES T. BARBER ET AL. } No. 451. Conspiracy.

On motion of Peyton Gordon, special assistant to the attorney-general, it is ordered that the plaintiff have leave to file separate demurrers to defendant's pleas in abatement, and that the same be filed nunc pro tunc, as of December 16, 1909.

77 *Telegram from Hon. Wm. B. Gilbert.*

PORTLAND, OGN., *Jan. 19th, 1910.*

A. L. RICHARDSON,
Clerk United States Circuit Court, Boise, Idaho:

Enter following order in The United States vs. James T. Barber, Sumner G. Moon, et al., now pending in the U. S. District Court on the petition of the plaintiff for writ of error, United States of America, District of Idaho, ss. Upon reading and filing the foregoing petition and the assignments of error therein referred to, it is ordered that the petition be and the same is hereby allowed, and that a writ of error as therein prayed be issued by the clerk of the Circuit Court for this district under the seal of such Circuit Court pursuant to section one thousand and four of the Revised Statutes. Dated at Portland, Oregon, January nineteenth, nineteen hundred and ten.

WM. B. GILBERT, *Circuit Judge.*

And the following: United States of America, ss. The President of the United States, to the Honorable Judges of the District Court of the United States for the District of Idaho. Greeting: Because in the record decisions and proceedings which is in said District Court before you, between the United States of America, plaintiff, and James T. Barber, Sumner G. Moon, and other defendants, a manifest error hath happened to the great damage of the United States of America, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington within thirty days from the date hereof. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done. Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the nineteenth day of January, in the year of our Lord nineteen hundred and ten. Signed Clerk of the Circuit Court of the United States for the District of Idaho.

Allowed by William B. Gilbert, Circuit Judge.

I am sending you this on the assumption that the petition for the writ has been filed with you. If it has not, please wire me at once.

WM. B. GILBERT.

12.10 p. m.

Filed January 19, 1910.

A. L. RICHARDSON, *Clerk.*

78 *Petition for writ of error.*

In the District Court of the United States within and for the District of Idaho, Central Division.

THE UNITED STATES OF AMERICA, plaintiff, *vs.* JAMES T. BARBER, SUMNER G. MOON, et al., defendants.	No. 451. Petition for writ of error.

And now comes The United States of America, plaintiff herein, and says that on the twenty-first day of December, 1909, this court made its decision and judgment sustaining the pleas of the defendants, James T. Barber and Sumner G. Moon, to the fourth count of the indictment dismissing said cause and indictment as against the demurrers of the United States to said pleas, wherein defendants pleaded and set up the statute of limitations as a bar to the prosecution of this action against them for the reason that the offense

charged in the indictment was committed more than three years before the finding of said indictment; that by said judgment and decision certain errors were committed to the prejudice of this plaintiff, and of such character as to entitle this plaintiff, under the law, to review the said judgment and decision in the Supreme Court of the United States by writ of error, all of which will appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may
79 issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of and that a transcript of the record and proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court.

A. B. JACKSON,
PEYTON GORDON,
Special Assistants to the Attorney-General.
S. L. TIPTON,
Assistant U. S. Attorney for the District of Idaho,
Attorneys for Plaintiff.

(Endorsed:) Filed Jan. 19, 1910. A. L. Richardson, clerk.

80 *Assignments of error.*

In the District Court of the United States within and for the District of Idaho, Central Division.

THE UNITED STATES OF AMERICA, plaintiff, *vs.* JAMES T. BARBER, SUMNER G. Moon, et al., defendants.	No. 451. Assignments of error.

Comes now The United States of America, plaintiff in the above entitled cause, and files this its assignments of error upon which it will rely in the prosecution of the writ of error to be sued out by it for review by the Supreme Court of the judgment and decision heretofore entered by the District Court of the United States for the District of Idaho in the above entitled cause, to wit:

First. The District Court of the United States for the District of Idaho erred in sustaining the pleas of the defendants James T. Barber and Sumner G. Moon to the fourth count of the indictment.

Second. The said District Court erred in dismissing said cause.

Third. That said District Court erred in overruling the demurrers interposed by the plaintiff to the pleas of the defendants James T. Barber and Sumner G. Moon.

Fourth. That the said District Court erred in not overruling the pleas of the defendants James T. Barber and Sumner G. Moon.

Wherefore the United States of America prays that the judgment of the District Court of the United States for the District of

81 Idaho be reversed and that the said District Court be directed to reinstate the said indictment and to proceed with the trial of the cause and said fourth count of the indictment.

A. B. JACKSON,
PEYTON GORDON,
Special Assistants to Attorney General.
S. L. TIPTON,
Assistant U. S. Attorney for the District of Idaho,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
District of Idaho, ss:

Upon reading and filing the foregoing petition and the assignments of error therein referred to it is ordered that the petition be, and the same hereby is, allowed and that a writ of error as therein prayed be issued by the clerk of the Circuit Court for this district, under the seal of such Circuit Court pursuant to section one thousand and four of the Revised Statutes.

Dated at Portland, Oregon, January 19th, 1910.

(S.) WM. B. GILBERT,
Circuit Judge.

By A. L. RICHARDSON,
Clerk, upon authority of telegram from Judge Gilbert, dated Portland, Oregon, Jan. 19th, 1910.

(Endorsed:) Filed Jan. 19, 1910. A. L. Richardson, clerk.

82 *Writ of error from the Supreme Court of the United States to the District Court of the United States for the District of Idaho.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the District Court of the United States for the District of Idaho, greeting:

Because in the record, decisions, and proceedings which is in said District Court before you between the United States of America, plaintiff, and James T. Barber, Sumner G. Moon, and other defendants, a manifest error has happened, to the great damage of the United States of America. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court, at Washington, within thirty days from the date hereof. That the records and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error

what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the nineteenth day of January, in the year of our Lord one thousand nine hundred and ten.

[SEAL.] A. L. RICHARDSON,
Clerk of the Circuit Court of the United States for the District of Idaho.

Allowed by—
WILLIAM B. GILBERT, *Circuit Judge.*

(Indorsed:) No. 451. In the District Court of the *Uni*United States within and for the District of Idaho, central division. The United States of America, plaintiff, vs. Sumner G. Moon, James T. Barber, et al., defendants. Writ of error. Filed Jan. 19, 1910. A. L. Richardson, clerk.

84 THE UNITED STATES OF AMERICA, *District of Idaho, ss:*

To James T. Barber, Sumner G. Moon et al., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 21st day of February next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the District of Idaho, wherein The United States of America is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment and decision rendered against the said plaintiff in error as in the said writ mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand at the city of Portland, in the circuit above named, this 22nd day of January, in the year of our Lord one thousand nine hundred and ten.

WM. B. GILBERT,
Circuit Judge.

Attest—
[SEAL.] A. L. RICHARDSON, *Clerk.*

Service of the foregoing citation acknowledged this day of , 1910.

Attorneys for Defendants in Error.

UNITED STATES OF AMERICA, *District of Idaho, ss:*

I hereby certify that I received the within citation on January 28, 1910, and served the same as to the defendants, James T. Barber and Sumner G. Moon, by delivering to and leaving with A. A. Fraser, their attorney of record, a true copy of the within writ and citation on January 28, 1910, at Boise, Idaho.

S. L. HODGIN, *U. S. Marshal.*
By E. W. BEEMER, *Deputy.*

BOISE, IDAHO, *Jan. 28, 1910.*

(Indorsed:) No. 451. United States Circuit Court, District of Idaho. The United States of America, plaintiff in error, vs. James T.

Barber, Sumner G. Moon et al., defendants in error. Citation on writ of error. Filed on return this 28th day of January, 1910. A. L. Richardson, clerk. H. 203 Civ., 1/28–10.

85 *Return to writ of error.*

And thereupon it is ordered by the court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Attest:

[SEAL.] A. L. RICHARDSON, *Clerk.*

86 *Clerk's certificate.*

In the United States District Court, District of Idaho.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
JAMES T. BARBER, SUMNER G. MOON, FRANK MARTIN, AND ALBERT E. PALMER, defendants in error.

I, A. L. Richardson, clerk of the District Court of the United States, in and for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 86, inclusive, to be full, true, and correct copies of the pleadings and proceedings in the above-entitled cause and that the same together constitute the transcript of the record herein upon writ of error to the Supreme Court of the United States.

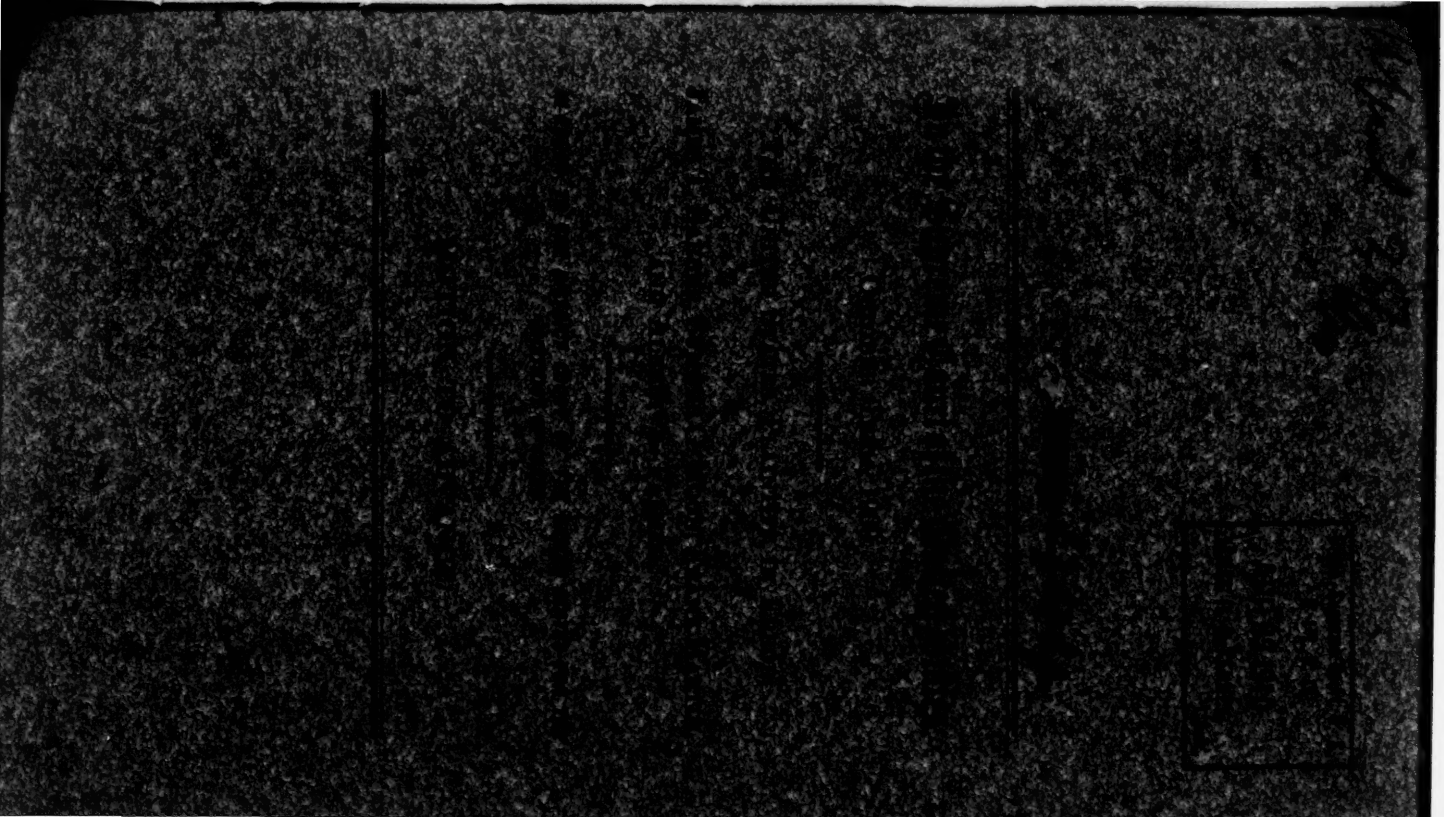
Witness my hand and the seal of said court affixed at Boise, Idaho, this 7th day of February, 1910.

[SEAL.] A. L. RICHARDSON, *Clerk.*

(Indorsed:) Office of the clerk. Received Feb. 15, 1910. Supreme Court U. S.

(Indorsed:) File No. 22024. Idaho D. C. U. S. Term No. 798. The United States, plaintiff in error, vs. James T. Barber, Sumner G. Moon, et al. Filed February 16, 1910. File No. 22024.

○



In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE UNITED STATES, PLAINTIFF IN error,
v.
JAMES T. BARBER, SUMNER G. MOON, Frank Martin, and Albert E. Palmer.
No. 798.

MOTION TO ADVANCE.

The defendants in error were indicted in the District Court of the United States for the District of Idaho on April 14, 1908, for conspiring, with other persons, to defraud the United States out of the possession and use of and title to certain large tracts of timber land in the State of Idaho by soliciting, inducing, and procuring a large number of persons to apply for and enter said lands upon an agreement and understanding that the title thereto, when acquired, should inure to the use and benefit of the defendants and others.

There were four counts in the indictment, to each of which demurrers and pleas (called "pleas in abatement") setting up the statute of limita-

tions (sec. 1044 R. S.) were filed on behalf of the defendants Barber and Moon. The indictment was dismissed as against defendant Martin, and the first three counts thereof were dismissed as against Barber and Moon. The record is silent as to any service upon defendant Palmer.

The pleas to the fourth count were sustained and the present writ of error was sued out under the criminal appeals act; and in accordance with the provision of that act giving precedence in such cases the Solicitor-General moves the court to advance the case on the docket for hearing at the next term.

Notice of this motion has been served upon opposing counsel.

LLOYD W. BOWERS,
Solicitor-General.

APRIL, 1910.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

THE UNITED STATES, PLAINTIFF IN error,
v.
JAMES T. BARBER, SUMNER G. MOON et al.
No. 444.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF THE CASE.

James T. Barber, Sumner G. Moon, Frank Martin, and Albert E. Palmer were indicted, with others, for a conspiracy to defraud the United States out of the possession and use of a number of tracts of timber land situated in the county of Boise, State of Idaho. No disposition of the case is made as to Palmer, and it may be inferred that he is not under arrest. The case was dismissed as to defendant Martin. (Rec., p. 43.)

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The indictment contains four counts, all of which relate to the same conspiracy, but in the fourth count, not only is the conspiracy described in detail, but the character and date of each overt act are fully set forth. (Rec., pp. 14–27.) Defendants Barber and Moon filed a demurrer to the entire indictment, specifying as grounds (1) that the indictment does not state facts sufficient to constitute a public offense; (2) that the facts stated in the indictment do not constitute any violation of the Constitution or laws of the United States; and (3) that the indictment shows upon its face that the action is barred by the provisions of section 1044 of the Revised Statutes of the United States. (Rec., p. 35.) In the same demurrer they set forth grounds directed against each of the first three counts, which need not be stated, as a *nolle prosequi* was subsequently entered as to these counts. (Rec., pp. 35 and 45.)

On December 15, 1909, these defendants filed a separate demurrer to the fourth count, on the ground that it does not state sufficient facts to constitute an offense against or under the laws of the United States. (Rec., p. 36.) On December 16, 1909, each of the defendants, Barber and Moon, filed what is denominated a plea in abatement to the indictment, on the ground that the prosecution had been barred by the statute of limitation when the indictment was found, the allegations of the plea being in the following language:

> Because, he says, the indictment was found and filed on the 14th day of April, 1908, and

that said indictment was not found or filed or information instituted in the proper or any other court within three years after the commission of the offenses in said counts of said indictment specified, and because, he says, the offense is barred as to each count by the provisions of section 1044 of the Revised Statutes of the United States of America, in this, that more than three years have elapsed between the date of the commission of the alleged crime charged in each of said counts and the date of the finding of said indictment; and in this behalf the defendant, James T. Barber, alleges that during all of said times between the commission of said alleged crime, to wit, the 1st day of September, 1901, up to the present date, and the filing of this plea, this defendant, the said James T. Barber, was a citizen and resident of the county of Eau Claire, in the State of Wisconsin, and did have his home and usual and well-known place of abode at Eau Claire, in the county of Eau Claire, State of Wisconsin, and was at all times subject to process of this court, and at no time during this period of time was he, the said James T. Barber, a fugitive from justice, or was he fleeing from justice, and that the said James T. Barber did not at any time between the dates of the commission of the offense alleged and charged in each of the counts, as aforesaid, and the finding of said indictment, leave his home and well-known place of abode in the city of Eau Claire, Wis., with intent to avoid detection or punishment

> for any public offense against the United States or at all. (Rec., pp. 37, 38.)

On December 16, 1909, the United States filed demurrers to these pleas in so far as they applied to the fourth count, stating as grounds therefor that the matters contained therein—

> are not sufficient in law to bar or preclude the said United States from prosecuting the said fourth count of the said indictment against him, the said James T. Barber, and that the said United States is not bound by law to answer the same; and this the said A. B. Jackson and Peyton Gordon, who prosecute as aforesaid, are ready to verify.
>
> Wherefore, for want of sufficient plea in this behalf, the said A. B. Jackson and Peyton Gordon, for the said United States, pray judgment, and that the said James T. Barber may be convicted of the premises of the said indictment specified. (Rec., pp. 39, 40.)

As bearing on the demurrers to the so-called pleas in abatement, it was agreed in a written stipulation that certain matters which were equivalent to allegations that defendants had not been fugitives from justice might be treated as having been incorporated in the plea. (Rec., pp. 40, 41.)

With the pleadings in this shape, after argument, on December 21, 1909, the court entered the following order:

> Now came the attorneys for the respective parties herein, and thereupon the demurrer to the third count in the indictment herein is

withdrawn by the defendants. The demurrer to the second count of the indictment is confessed by complainant, and it is ordered that the demurrer and plea in abatement to the first count of the indictment be, and is hereby, overruled and denied. *It is further ordered that plea in abatement to the fourth count of the indictment be, and is hereby, sustained.* Thereupon counsel for the Government moved and asked that the three first counts of the indictment in the above-entitled action be nollied; thereupon said motion was granted and the cause dismissed; all in accordance with the direction of Hon. Robert S. Bean, district judge, who heretofore heard and took under advisement said demurrer and plea in abatement. (Rec., p. 45).

The United States thereupon filed the following assignments of error:

First. The District Court of the United States for the District of Idaho erred in sustaining the pleas of the defendants James T. Barber and Sumner G. Moon to the fourth count of the indictment.

Second. The said district court erred in dismissing said cause.

Third. That said district court erred in overruling the demurrers interposed by the plaintiff to the pleas of the defendants James T. Barber and Sumner G. Moon.

Fourth. That the said district court erred in not overruling the pleas of the defendants James T. Barber and Sumner G. Moon. (Rec., p. 47.)

To reverse the action of the court with reference to the fourth count in the indictment, the cause has been removed by writ of error to this court.

ARGUMENT.

I.

This case falls within the provision of the act of March 2, 1907 (ch. 2564, 34 Stat., 1246), which provides for writs of error to this court in certain instances in criminal cases.

The third class of judgments which it is provided by said act may be removed to this court by writ of error are those "sustaining a special plea in bar when the defendant has not been put in jeopardy," but it contains no provision authorizing a review of a judgment sustaining a plea in abatement.

However, a plea of the statute of limitation is one in bar and not in abatement.

In 12 Cyc., 355, in defining a plea in abatement, it is said:

> Any defect apparent on the face of the indictment, or founded on matter extrinsic of the record, *rendering the indictment insufficient,* may be made the ground of a plea in abatement, and if found for defendant will abate the indictment.

And in the same volume, page 362, in paragraph (d) under "*Special pleas in bar,*" is discussed the plea of limitation.

Bouvier (Rawle's Revision, vol. 1, p. 5) defines abatement "In pleading at law" as—

> The overthrow of an action caused by the defendant pleading some matter of fact tending to impeach the correctness of the writ or declaration, defeats the action for the present, but does not debar the plaintiff from recommencing it in a better way.

In 1 Bish. New Crim. Proc., section 799, the plea of the statute of limitation is treated as a plea in bar; and from his definition of a plea in abatement (sec. 738) such a plea could not possibly be so classified.

But citation of authorities is unnecessary, as the plea of the statute of limitation does not question the validity of the indictment, but is directed to the merits of the case; and if found in favor of the defendant, the judgment is necessarily an acquittal of the defendant of the charge, and not a mere abatement of the action; and it has been universally classed, in both civil and criminal procedure, as a plea in bar and not one in abatement. Consequently, the designation of this document as a plea in abatement no more changed its nature than it would change the nature of an indictment for murder to designate it as a bill in equity.

The defendant, therefore, claims his discharge under a judgment sustaining this special plea in bar; and it is a judgment that the act of March 2, 1907, expresssly permits to be reviewed by this court at the instance of the United States.

II.

The demurrer to the plea should have been sustained.

While the record is in an awkward condition, yet it shows with sufficient clearness what action was in fact taken by the court below. Technically, there should have been a judgment overruling the demurrer to the plea, then an issue on the allegations of the plea, a trial of the question of fact thus presented, a finding in favor of defendants, and a judgment sustaining the plea. But here the whole matter was argued, considered, and determined together, and the judgment "that the plea in abatement to the fourth count of the indictment be, and is hereby, sustained," was necessarily a judgment sustaining it as against the attack by demurrer, as well as upon the questions presented in the plea itself; and there is before this court every question relating to the validity and sufficiency of the plea which was before the court below.

The demurrer to the plea should have been sustained upon the following grounds:

First. *A special plea in bar is not permissible in a criminal case, but the defense of the statute of limitations must be made under the general issue.*

This question is fully discussed in section 1, subsection A, of the Solicitor-General's brief and argument in cause No. 390, *United States* v. *Gustav E. Kissel*, and reference is made thereto without repeating the same here.

Second. *The plea is bad in form in that it does not confess the allegations of the indictment.*

In 12 Cyc., 361, under "*Special pleas in bar,*" it is said:

> In a criminal prosecution defendant may and should plead specially in bar any matter in *confession and avoidance* constituting a defense and not admissible under a plea of not guilty.

And in the same connection it is said that—

> by the weight of authority a special plea setting up a defense which is admissible under the plea of not guilty is bad and should be stricken out, unless the objection is waived by the State.

In Bouvier (Rawle's Revision, vol. 2, p. 679), with reference to pleas at law, it is said:

> Special pleas in bar *admit the facts alleged in the declaration,* but avoid the action which the plaintiff would not be bound to prove or dispute in the first instance on the general issue.

Therefore, according to these authorities, if a defendant chooses to present his defense of the statute of limitation by way of a special plea instead of under the general issue, if permissible at all, he must confess the allegations of the indictment.

The various phases of this question are fully discussed in section 1, subsection B, of the Solicitor-General's brief in the *Kissel* case, to which reference is here made.

III.

The judgment sustaining the plea should be reversed, because no replication was filed to the plea, nor was any judgment by default taken thereon, and no evidence was introduced or offered to sustain the allegations thereof.

The record shows that there was no trial of the questions of fact presented by the plea. Manifestly, the court determined the sufficiency of the plea from the facts alleged in the indictment. But, if those allegations were not confessed by the plea, how could they be considered as evidence, or looked to in any way in determining whether the plea should be sustained? Moreover, the Government is not bound by those allegations, but may prove that the conspiracy was formed on an entirely different date from the one therein alleged.

The defendants have sought to dispose of the case in this summary manner by filing a special plea stating that they committed the offense, but that it was done more than three years before the finding of the indictment, and ask that that question be disposed of before the merits be gone into. Now, whatever the rule may be with reference to the burden of proof to show when an offense was committed when a trial is being had upon the merits, it is obvious that upon a preliminary hearing on this plea, invoked by defendants, the burden rests upon them to prove the affirmative allegations contained therein, and that in the absence of all proof their plea must fail.

IV.

The offense, as charged in the fourth count of the indictment, was not barred by the statute of limitation when the indictment was found.

As above stated, the court below manifestly based his judgment that the plea of the statute of limitation should be sustained on the facts as set out in the indictment, and the Government insists that in so holding on those facts he committed error.

The plan of the conspiracy charged and the overt acts committed in pursuance thereof were as follows:

The conspiracy was formed by the defendants and their coconspirators to obtain for themselves and the Barber Lumber Company, a corporation to be thereafter organized, and which was subsequently organized under the laws of Wisconsin, the title to the lands described in the indictment. This was to be accomplished by inducing and procuring a large number of persons to apply for and enter these lands under the laws relating to the purchase and sale of timber lands of the United States, with an agreement made prior to the first application to enter, with each of said persons, that the title to the land acquired by the entry should inure to the use and benefit of the conspirators and the said corporation. The conspirators were to point out to and select for the applicants the land which they were to apply to enter, and furnish them descriptions of the same, and to prepare the necessary papers to be filed with the United States land office at Boise, and were to represent and

defend them in all proceedings before the land office relating to the entering and purchase of the lands; and, if necessary, were to furnish the entrymen with the money necessary to make final proof and to purchase the lands from the United States, and prepare all the necessary deeds to convey the title to the lands, when acquired, to the defendants and to the said corporation, or such persons as they might designate to hold the title for the use of said corporation; and were to pay all expenses incident to the execution and filing and recording of such conveyances.

The overt acts alleged to have been committed "in furtherance, continuance, and renewal" of this conspiracy were as follows:

(1) The conspirators solicited, induced, and procured sixty-eight persons (naming them) to make application at the land office in Boise, to purchase certain portions of the lands described in the indictment, and to execute and verify before the proper officers of the land office the preliminary affidavits required by law. A memorandum showing the numbers of these affidavits, the date of their filing, the date of the final proofs, and a description of the land described in each application is set forth in this count, and it appears therefrom that these applications were made, the first on August 17, 1901, and the last on June 8, 1904, and the remainder at various times between these dates.

(2) The conspirators subsequently solicited, induced, and procured these same parties to make final

proofs and payments for the land applied for by them; and the said memorandum shows that these final proofs were made, the first, November 13, 1901, and the last, September 20, 1904, and the remainder at various times between said dates.

(3) Thereafter, the dates of the conveyances not being given, the conspirators solicited, induced, and procured the persons mentioned to convey their interests in and title to the lands thus procured by them, to either Albert E. Palmer, George S. Long, or Horace S. Rand.

(4) On April 10, 1905 (the indictment was returned April 14, 1908), the defendants solicited, induced, and procured George S. Long to execute a deed conveying to the Barber Lumber Company his title and interest to a number of tracts (each being described), which he had procured in the manner above stated.

(5) On April 15, 1905, defendants procured the registration of the aforesaid deed.

(6) On May 27, 1905, Albert E. Palmer, with the knowledge and at the request of his codefendants, executed a deed conveying to the Barber Lumber Company the title to a large number of tracts (the description of each being given), which had been obtained in the manner shown.

(7) On the 28th day of June, 1905, Albert E. Palmer, with the knowledge and at the request of his codefendants, conveyed to said Barber Lumber Company the title to another one of said tracts which is particularly described.

(8) On January 2, 1906, Albert E. Palmer, with the knowledge and at the request of his codefendants, conveyed to the said lumber company the title to yet another of said tracts, the description of which is given.

(9) On the 5th day of July, 1905, the defendants procured the registration of the deed executed by Albert E. Palmer on June 28, 1905, and on February 2, 1907, they procured the registration of the deed executed by Palmer on January 2, 1906.

(10) On May 22, 1905, defendants solicited, induced, and procured L. G. Chapman, manager of the Barber Lumber Company, to write H. S. Rand, at Burlington, Iowa, the following letter:

> DEAR SIR: We inclose herewith quitclaim deed covering lands on the Boise River which have been purchased in your name. Will you kindly execute the same and have it executed by Mrs. Rand and return it to us at your convenience.

(11) On July 27, 1905, defendants received and accepted the deed executed by said H. S. Rand, which conveyed to the Barber Lumber Company the title to a large number of the tracts which had been procured under the conspiracy, and a particular description of which is set forth.

In the beginning of the count, the date or dates of the conspiracy is alleged to have been—

> on the first day of September, in the year nineteen hundred and one, and at the time of

> the committing of the several overt acts hereinafter in this indictment set forth, and continuously at all times between said first day of September, in the year nineteen hundred and one, and the day of the presenting and filing of this indictment;

and each overt act is alleged to have been done "in furtherance, continuance, and renewal" of the conspiracy.

The facts set forth in said count of the indictment show that the prosecution is not barred, because:

1. *Overt acts were committed within three years before the filing of the indictment.*

Whether or not an overt act committed in furtherance of a conspiracy within the statutory period of limitation prevented a bar of a criminal action brought under section 5440 of the Revised Statutes, was for a time a question of dispute among Federal judges, but at present a very great weight of authority of the lower courts favors the rule that such overt act prevents a bar.

In *Callan* v. *Wilson* (127 U. S., 555) this court, quoting from *Commonwealth* v. *Hunt* (4 Met., 111, 121), said:

> The general rule of the common law is, that it is a criminal and indictable offense for two or more to confederate and combine together, by concerted means, to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual.

In Wright's Criminal Conspiracies, page 124, it is said:

> The conspiracy itself is the crime. It is different from an indictment for stealing, or an action for trespass, where the offense consists of an act done. The devising of means is not a constituent part of the offense, but an act done in pursuance of the original design. *It is not the actual perpetration but the original hatching of the plot which constitutes the offense.*

The rule at common law, therefore, is that no overt act is necessary before there can be a prosecution for the crime.

Section 5440, Revised Statutes, provides that if two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, *and one or more of such parties do any act to effect the object of the conspiracy,* all the parties to such conspiracy shall be liable to a penalty, etc. Therefore, by positive provision of the statute, an overt act committed by one of the coconspirators is a necessary prerequisite to a criminal prosecution; but the purpose and effect of the provision requiring the commission of an overt act was thus stated by this court in *United States* v. *Britton* (108 U. S., 193, 204–205), in the following language:

> This offense does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, *but of the conspiracy alone.* The provision of the statute that there

> must be an act done to effect the object of the conspiracy merely affords a *locus penitentiæ*, so that before the act is done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute.

This language has been repeatedly quoted with approval by this court and other courts.

Since, therefore, it is the original confederating and combining together, by concerted means, or, in other words, *the hatching of the plot*, which constitutes the offense, and the overt act as required by the Federal statute is not a part thereof, the conspiracy—that is, *the offense itself*—is precisely the same at both common law and under this statute, *the statute requiring only a prerequisite to a prosecution for the offense* which did not exist at common law.

The rule with reference to the common-law conspiracy is that an overt act committed by one of the conspirators is conclusive evidence of a renewal or a continuance of the conspiracy at that date, and, consequently, that the prosecution may be maintained at any time within the statutory period thereafter. This rule is laid down with probably as much clearness as elsewhere in *People* v. *Mather* (4 Wendell, 259) in the following language:

> If conspirators enter into the illegal agreement in one county, the crime is perpetrated there, and they may be immediately prosecuted; but the proceedings against them must be in that county. If they go into another

> county to execute their plans of mischief and there commit an overt act, they may be punished in the latter county without any evidence of an express renewal of their agreement. *The law considers that wherever they act, there they renew, or, perhaps, to speak more properly, they continue their agreement, and this agreement is renewed or continued as to all whenever any one of them does an act in furtherance of their common design.*

To the same effect see *Commonwealth* v. *Barkilson* (85 Pa., 482, 488, 490), *Ochs* v. *People* (124 Ill., 429), *Amer. Fire Ins. Co.* v. *State* (Miss.), (22 South, 99, 102, 103).

In the Federal courts in the following cases, an opposite view was maintained:

United States v. *Owen*, decided by District Judge Deady (32 Fed., 534); *United States* v. *M'Cord*, charge to the jury by District Judge Bunn (72 Fed., 159, 165); *Ex parte Black*, opinion by District Judge Quarles on removal proceedings (147 Fed., 832). From the decision in *Ex parte Black*, appeal was taken to the Circuit Court of Appeals for the Seventh Circuit, where it was affirmed, but on another ground, to wit, that the overt act alleged to have occurred within three years before the finding of the indictment, was not done to effect the object of the conspiracy (160 Fed., 431, 435).

The principle that an overt act renews or continues the conspiracy, and that a prosecution may be maintained within three years after the commis-

sion of the last overt act, has been maintained by the district and circuit courts in the following cases:

United States v. *Green* (115 Fed., 343, 355), opinion by Judge Speer.

United States v. *Bradford* (148 Fed., 413, 417, 419), opinion by Judge Parlange.

United States v. *Brace* (149 Fed., 874, 876, 877), opinion by Judge Hill.

United States v. *Barber* (157 Fed., 889), opinion by Judge Quarles. This case is the one now at bar, being presented to Judge Quarles on the question of removal, and the holding of the court was contrary to his opinion in the case of *Ex parte Black*. This change of view was caused by the decision of the Court of Appeals in his circuit, wherein they held to the contrary in a case hereinafter cited.

United States v. *Raley* (173 Fed., 159, 165, 166), opinion by Judge Wolverton.

United States v. *Breese* (173 Fed., 402, 411), charge to the jury by District Judge Newman.

The Courts of Appeals have taken this view in the following cases:

The Court of Appeals of the District of Columbia in *Lorenz* v. *United States* (24 Ap. D. C., 337, 387, 388).

The Circuit Court of Appeals for the Fifth Circuit in *Bradford* v. *United States* (152 Fed., 617).

The Circuit Court of Appeals for the Eighth Circuit in *Ware* v. *United States* (154 Fed., 577, 579, 580). In this case the reasoning of the court upon this question is as follows:

The offense, under section 5440, is the conspiracy, not the conspiracy and the overt act. "The provision of the statute," says the Supreme Court, "that there must be an act done to effect the object of the conspiracy merely affords a locus penitentiæ, so that before the act done either one or all of the parties may abandon their design and thus avoid the penalty prescribed by the statute." (*U. S.* v. *Britton*, 108 U. S., 199, 205, 2 Sup. Ct., 525, 27 L. Ed., 703.) So that there is a locus penitentiæ after the performance of each overt act and a presumption of the innocence of the defendant, and if, after the performance of the first overt act, a defendant abandons the design of the conspiracy, and the prosecution of the conspiracy and if the first overt act becomes barred by the statute, the overt acts of other conspirators within the three years in the performance of the old conspiracy, without the conscious participation of the defendant ought not to charge, and can not charge, him with the offense, because they fail to evidence his intent to violate the law within the three years.

On the other hand, the offense denounced by section 5440 is not the mere formation, but the existence, of the conspiracy and its execution. And if by the agreement, or by the joint assent of the defendant and one or more other persons, within the three years, the unlawful scheme of the conspiracy is to be prosecuted, and an overt act is subsequently done to carry it into execution, the mere fact that the same parties had conspired

> and had wrought to accomplish the same or a like purpose more than three years before the filing of the indictment, ought not to constitute, and does not constitute, a defense to the charge of the conspiracy within the three years.

The Circuit Court of Appeals for the Ninth Circuit, in *Jones* v. *United States* (162 Fed., 417, 425, 427). In this case the court, in considering the authorities holding that an overt act committed within three years would not prevent the bar of the statute, said:

> If the conspiracy in question contemplated but the one overt act, that would undoubtedly be so. But we think it equally plain that where, as in the present case, the alleged conspiracy contemplated various overt acts, and the consequent continuance of the conspiracy beyond the commission of the first one, then each overt act gives a new, separate, and distinct effect to the conspiracy, and constitutes another crime.

And, after a very apt illustration, the court continues:

> So, in the case at bar, the conspiracy alleged contemplated the commission of various overt acts. It was a continuing conspiracy, and so long as the conspirators continued in pursuance of it, and did not avail themselves of the locus penitentiæ that section 5440 of the Revised Statutes afforded them, every overt act committed by any party to the conspiracy gave new effect to the conspiracy and constituted another crime.

It does not appear that any United States appellate court has taken a view contrary to these authorities.

2. *The overt acts alleged to have been committed within three years before the finding of the indictment were committed in furtherance and to effect the object of the conspiracy.*

As shown from the allegations of the indictment, as above set forth, the plan and scope of the conspiracy was to obtain title in the manner described from the United States, and procure the vesting of the same, by the method described, in the conspirators or in a corporation that should thereafter be formed and designated by them. It is true that the illegality of the agreement or conspiracy resulted from the intent to defraud the United States; but the agreement or conspiracy can not be split in two, but must be taken as a whole, and every step taken by each of the conspirators to further the object of the preliminary agreement entered into was clearly done in furtherance of and to carry into effect the entire scheme. Therefore the execution of the conveyances of the land acquired by the various entrymen, or the execution of a deed for such land by the vendees of such entrymen, when made at the instigation of the conspirators and as a part of the scheme as originally formulated, is just as much in furtherance of the conspiracy or plan, and was just as essential to its consummation, as was the filing of the original entries or final proofs and the procurement of title from the United States.

It is true the United States was defrauded when title passed from it to the several entrymen, but this was only a part of the general fraudulent scheme, which was not only to defraud the Government but to benefit the conspirators, and any material overt act which had for its object the benefit of the conspirators or of a corporation organized at their instance, or designated by them, was, under the authorities, conclusive evidence of a continuation or renewal of the original plot to defraud the Government and to acquire the lands for the conspirators.

In 157 Fed., 80, 89, as above shown, this case came before Judge Quarles on the question of removal, and the accused there took the position that the indictment did not upon its face show such probable cause as justified an order of removal, but the learned judge held that the overt acts alleged in the indictment were sufficient to renew or continue the conspiracy and prevented a bar of the action.

It is insisted, therefore, that the judgment of the court below should be reversed, and this case be remanded for trial.

J. A. FOWLER,
Assistant Attorney-General.

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